FEDERAL ELECTION COMMISSION

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

THIS IS THE END OF MUR # 2116

Date Filmed 6/25/86 Camera No. --- 2

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FEDERAL ELECTION COMMISSION

File Index, Routing Slips, Mailing addresses for notification of receipt of Complaint, 12 Report and Comments, MUR assignment form, Memo from Kenneth Gross to Charles Steele, RAD RFAIs, Extra Copy of 1st GC Report, Letter to Bob Bauer

The above-described material was removed from this file pursuant to the following exemption provided in the Freedom of Information Act, 5 U.S.C. Section 552(b):

___	(1) Classified Information	___	(6) Personal privacy
✓	(2) Internal rules and practices	___	(7) Investigatory files
___	(3) Exempted by other statute	___	(8) Banking Information
___	(4) Trade secrets and commercial or financial information	___	(9) Well Information (geographic or geophysical)
✓	(5) Internal Documents		

Signed Michele Brown

date June 19, 1986

FEC 9-21-77

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 19, 1986

Robert F. Bauer, Esquire
Perkins Coie
1110 Vermont Avenue, N.W.
Washington, D.C. 20005

Re: MUR 2116

Dear Mr. Bauer:

The caption in the Commission's letter to you dated June 17, 1986, indicated incorrectly that the Commission had closed MUR . The Commission closed MUR 2116 instead, and a copy of the General Counsel's Report in MUR 2116 was enclosed with the June 17, 1986 letter. I apologize for the error.

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 17, 1986

E. Mark Braden, Esquire
Chief Counsel
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 2116
Republican National Committee
William J. McManus, as treasurer

Dear Mr. Braden:

The Federal Election Commission notified the Republican National Committee and William J. McManus, as treasurer, on January 9, 1986, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to the Committee at that time. We acknowledge receipt of your client's explanation of this matter which was dated January 21, 1986.

The Commission, on June 5, 1986, considered the complaint but was divided by a vote of 3-2 with one abstention on the question of whether to find reason to believe a violation of section 441a(d) has been committed. Also on that date, the Commission determined that on the basis of the information in the complaint, and information provided by the respondents, there is no reason to believe that a violation of section 441d has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert F. Bauer, Esquire
Perkins Coie
1110 Vermont Avenue, N.W.
Washington, D.C. 20005

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Sincerely,

Charles N. Steele
General Counsel
mb 6/19/86

BY: Lawrence M. Noble
Deputy General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

E. Mark Braden, Esquire
Chief Counsel
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 2116
Republican National Committee
William J. McManus, as treasurer

Dear Mr. Braden:

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The Commission, on June 5, 1986, considered the complaint but was divided by a vote of 3-2 with one abstention on the question of whether to find reason to believe a violation of section 441a(d) has been committed. Also on that date, the Commission determined that on the basis of the information in the complaint, and information provided by the respondents, there is no reason to believe that a violation of section 441d has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel

mb 6/16/86

BY: Lawrence M. Noble
Deputy General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 17, 1986

Jan W. Baran, Esquire
General Counsel
Benjamin L. Ginsberg, Esquire
Legal Counsel
National Republican Congressional Committee
320 First Street, S.E.
Washington, D.C. 20003

RE: MUR 2116
National Republican
Congressional Committee
Jack McDonald, as treasurer

Dear Messrs. Baran and Ginsberg:

The Federal Election Commission notified the National Republican Congressional Committee and Jack McDonald, as treasurer, on January 9, 1986, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to the Committee at that time. We acknowledge receipt of your client's explanation of this matter which was dated February 17, 1986.

The Commission, on June 5, 1986, considered the complaint but was divided by a vote of 3-2 with one abstention on the question of whether to find reason to believe a violation of section 441a(d) has been committed. Also on that date, the Commission determined that on the basis of the information in the complaint, and information provided by the respondents, there is no reason to believe that a violation of section 441d has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Jan W. Baran, Esquire
General Counsel
Benjamin L. Ginsberg, Esquire
Legal Counsel
National Republican Congressional Committee
320 First Street, S.E.
Washington, D.C. 20003

RE: MUR 2116
National Republican
Congressional Committee
Jack McDonald, as treasurer

Dear Messrs. Baran and Ginsberg:

The Federal Election Commission notified the National Republican Congressional Committee and Jack McDonald, as treasurer, on January 9, 1986, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to the Committee at that time. We acknowledge receipt of your client's explanation of this matter which was dated February 17, 1986.

The Commission, on June 5, 1986, considered the complaint but was divided by a vote of 3-2 with one abstention on the question of whether to find reason to believe a violation of section 441a(d) has been committed. Also on that date, the Commission determined that on the basis of the information in the complaint, and information provided by the respondents, there is no reason to believe that a violation of section 441d has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel
mb 6/16/86

BY: Lawrence M. Noble
Deputy General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 17, 1986

Robert G. Flanders, Jr.
Edwards & Angell
2700 Hospital Trust Tower
Providence, Rhode Island 82903

RE: MUR 2116
John A. Holmes, Jr.

Dear Mr. Flanders:

On March 15, 1986, the Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on June 5, 1986, determined that on the basis of the information in the complaint, and information provided by you on behalf of your client, there is no reason to believe that John A. Holmes violated 2 U.S.C. § 432(e)(1). Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel

By: Lawrence M. Noble
Deputy General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert G. Flanders, Jr.
Edwards & Angell
2700 Hospital Trust Tower
Providence, Rhode Island 82903

RE: MUR 2116
John A. Holmes, Jr.

Dear Mr. Flanders:

On March 15, 1986, the Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on June 5, 1986, determined that on the basis of the information in the complaint, and information provided by you on behalf of your client, there is no reason to believe that John A. Holmes violated 2 U.S.C. § 432(e)(1). Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel
mb 6/16/86
RVC
By: Lawrence M. Noble
Deputy General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 17, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert F. Bauer, Esquire
Perkins Coie
1110 Vermont Avenue, N.W.
Washington, D.C. 20005

RE: MUR 2166

Dear Mr. Bauer:

The Federal Election Commission has reviewed the allegations contained in your complaint dated December 20, 1985. The Commission considered your complaint on June 5, 1986, but was divided by a vote of 3-2 with one abstention on the question of whether to find reason to believe that a violation of section 441a(d) of the Federal Election Campaign Act of 1971, as amended ("the Act"), was committed.

The Commission determined, also on June 5, 1986, that on the basis of the information provided in your complaint and information provided by the Respondents there is no reason to believe that a violation of section 441d or section 432(e)(1) of the Act has been committed. Accordingly, the Commission has decided to close the file in this matter. The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Should additional information come to your attention which you believe establishes a violation of the Act, you may file a

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert F. Bauer, Esquire
Perkins Coie
1110 Vermont Avenue, N.W.
Washington, D.C. 20005

RE: MUR 2166

Dear Mr. Bauer:

The Federal Election Commission has reviewed the allegations contained in your complaint dated December 20, 1985. The Commission considered your complaint on June 5, 1986, but was divided by a vote of 3-2 with one abstention on the question of whether to find reason to believe that a violation of section 441a(d) of the Federal Election Campaign Act of 1971, as amended ("the Act"), was committed.

The Commission determined, also on June 5, 1986, that on the basis of the information provided in your complaint and information provided by the Respondents there is no reason to believe that a violation of section 441d or section 432(e)(1) of the Act has been committed. Accordingly, the Commission has decided to close the file in this matter. The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Should additional information come to your attention which you believe establishes a violation of the Act, you may file a

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complaint pursuant to the requirements set forth in 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4.

Sincerely,

Charles N. Steele
General Consel
mb 6/16/86
RMT

BY: Lawrence M. Noble
Deputy General Counsel

cc: The Honorable Tony Coelho
Enclosure
General Counsel's Report

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
National Republican Congressional Committee and Jack McDonald, as treasurer, Republican National Committee and William J. McManus, as treasurer, and John A. Holmes, Jr.	)	MUR 2116

CERTIFICATION

I, Mary W. Dove, recording secretary for the Federal Election Commission executive session of June 5, 1986, do hereby certify that the Commission took the following actions in MUR 2116:

1. Failed by a vote of 3-2 to find reason to believe the National Republican Congressional Committee and Jack McDonald, as treasurer, and the Republican National Committee and William J. McManus, as treasurer, violated 2 U.S.C. § 441a(d).

   Commissioners Harris, McDonald, and McGarry voted affirmatively. Commissioners Elliott and Josefiak dissented. Commissioner Aikens abstained.

2. Decided by a vote of 6-0 to:

   a. Find no reason to believe the National Republican Congressional Committee and Jack McDonald, as treasurer, and the Republican National Committee and William J. McManus, as treasurer, violated 2 U.S.C. § 441d.

   b. Find no reason to believe John A. Holmes, Jr. violated 2 U.S.C. § 432(e)(1).

   c. Close the file.

   d. Send the appropriate letters.

   Commissioners Aikens, Elliott, Harris, Josefiak, McDonald, and McGarry voted affirmatively.

Attest:

6-5-86
Date

Mary W. Dove
Mary W. Dove
Administrative Assistant

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE, GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/CHERYL A. FLEMING

DATE: MAY 21, 1986

SUBJECT: OBJECTION TO MUR 2116 - GENERAL COUNSEL'S REPORT SIGNED MAY 16, 1986

The above-named document was circulated to the Commission on Tuesday, May 20, 1986, 11:00 A.M.

Objections have been received from the Commissioners as indicated by the name(s) checked:

Commissioner Aikens	
Commissioner Elliott	X
Commissioner Harris	
Commissioner Josefiak	X
Commissioner McDonald	
Commissioner McGarry	

This matter will be placed on the Executive Session agenda for Tuesday, June 3, 1986.

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BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
THE FEC
COMMISSION SECRETARY

In the Matter of)
)
National Republican Congressional)
Committee and Jack McDonald,)
as treasurer, Republican National)
Committee and William J. McManus,)
as treasurer, and John A.)
Holmes, Jr.)

MUR 2116

MAY 19 1:34

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Robert F. Bauer, on behalf of the Democratic Congressional Campaign Committee ("DCCC"), has filed a complaint with the Commission alleging that the National Republican Congressional Committee ("NRCC"), the Republican National Committee ("RNC") and John A. Holmes, Jr. seek the defeat of Rhode Island first Congressional district incumbent Representative Fernand St Germain in the 1986 general election and the election of Republican John A. Holmes, Jr. DCCC alleges the NRCC and RNC have expended funds in a coordinated effort through mass media and mailings to promote the candidacy of Mr. Holmes and to defeat Congressman St Germain.

According to the complaint, Rhode Island Citizens for Accountability in Government sent $10,000 worth of mailings questioning Representative St Germain's personal finances and conduct in office. DCCC alleges the Rhode Island Citizens group is a sham and that the NRCC paid for the mailing. This allegation is based on the fact that the NRCC prepared and paid for $15,000 worth of television advertisements on the same theme of Representative St Germain's personal funds and conduct in office. It is also based on a statement appearing in an article in The Providence Journal-Bulletin. The article says

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that, according to Douglas McAuliffe, an NRCC aide, NRCC and its contractors polished the text of the mailing and handled its printing and mailing. The complaint also alleges that Mr. Holmes is a candidate for Congress and, therefore, should have registered as a candidate with the Commission.

The Office of General Counsel sent notice of the complaint to the respondents on January 9, 1986. The Office of General Counsel received the RNC response on January 27, 1986 and the NRCC submitted its response on February 19, 1986. Mr. Holmes did not receive the notice of the complaint. A second notice was sent to him and Mr. Holmes responded on March 28, 1986.

II. Factual and Legal Analysis

According to the complaint, Rhode Island Citizens for Accountability in Government ("Rhode Island Citizens") sent a mailing (see Attachment 1) to residents of the first congressional district of Rhode Island, Representative St Germain's constituents. The mailing discusses articles published in The Wall Street Journal and The Providence Journal-Bulletin which accuse Representative St Germain of amassing a multimillion dollar personal fortune by using his position in Congress to help wealthy investors. The mailing asks Representative St Germain to disclose his financial records and income tax returns. Attached to the mailing is a petition, which the recipient may sign, addressed to Representative Julian Dixon, Chairman of the U.S. House of Representatives Ethics Committee. The petition urges Chairman Dixon to conduct an official investigation into

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the accusations against Representative St Germain and to request that Representative St Germain disclose his financial and tax records. The mailing asks the recipient and members of the recipient's household to sign the petition and return it to Rhode Island Citizens. The mailing states that Rhode Island Citizens is a non-partisan group.

DCCC charges that NRCC paid for the mailing which cost $10,000 and that Rhode Island Citizens is a sham organization. DCCC alleges the NRCC has violated the Federal Election Campaign Act of 1971, as amended (the "Act" or "FECA") by failing to allocate the cost of the mailing to the political party spending limitations, 2 U.S.C. § 441a(d), which apply to NRCC/RNC activities on behalf of Republican general election candidates for the U.S. House of Representatives.

DCCC bases its contention that allocation is required on Advisory Opinion 1985-14. DCCC states that direct mailings, even without an electioneering message, are subject to the limits applicable to a political party's support of its general election candidates under 2 U.S.C. § 441a(d).

NRCC filed its response to the complaint on February 19, 1986 (Attachment 3). NRCC states that it is an unincorporated association authorized by Republican members of the U.S. House of Representatives. NRCC is concerned, according to the response, with the reputation and effectiveness of the House of Representatives. NRCC considers to be among its duties and

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rights constructive commentary about current events and the House as an effective body. It is also concerned with the performance, actions and records of public officials. As evidenced by The Wall Street Journal and The Providence Journal-Bulletin articles, NRCC contends that a public debate was occurring and the NRCC participated by aiding Rhode Island Citizens with its mailing and by producing and broadcasting the television advertisement.

NRCC also contends that it assisted Rhode Island Citizens with the mailing in response to Rhode Island Citizens' request. NRCC states that it required, as a condition for spending its funds for the mailing, that Rhode Island Citizens provide assurances that the mailing would not advocate the election or defeat of any candidate.

NRCC argues that AO 1985-14 is not implicated nor is section 441a(d). For the section 441a(d) limitation to apply, NRCC contends, AO 1985-14 concluded the communication must both depict a clearly identified candidate and convey an electioneering message. The mailing in this case, NRCC concludes, does not contain an electioneering message.

On May 30, 1985, the Commission issued Advisory Opinion 1985-14 to Robert F. Bauer, who requested the AO on behalf of the DCCC, also the complainant in this matter. In AO 1985-14, the Commission considered whether DCCC broadcast advertisements and other general public communications, including direct mail communications that specifically identify Republican congressmen and criticize their records, require allocation among the

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candidates under 11 C.F.R. 106.1(a) and AO 1984-15. DCCC also asked if the answer would depend on whether the communications referred to elections or any express advocacy language.

The Commission concluded in AO 1985-14 that DCCC's payments for the communications were reportable expenditures for the purpose of influencing Federal elections. The Commission then concluded DCCC's proposed mailer would be subject to the Act's limitations and attributable to each candidate in accordance with the benefit received by the candidate, pursuant to 11 C.F.R. 106.1. This conclusion was based on the assumption that the mailer would identify by name a specific Congressman. Also, the DCCC planned to send the mailer to part or all of the district represented by the identified congressman. The Commission determined the mailer either with or without a "Vote Democratic" statement would be subject to the Act's limitations. The DCCC mailer in the AO was to include the language "Don't be fooled by Republican rhetoric" and it would list oil industry contributions to the identified Congressman. These features of the mailing were sufficient to meet the requirements set out by the Commission in AO 1984-15. In that AO, the Commission concluded the § 441a(d) limitations would apply where the communication both depicted a clearly identified candidate and conveyed an electioneering message. Electioneering messages, according to AO 1985-14 which cited United States v. United Auto Workers, 352 U.S. 567, 587 (1957), include statements "designed to urge the public to elect a certain candidate or party."

The Commission reached its conclusions in AO 1985-14 even though DCCC stated that there might not be a Democratic

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candidate, either announced or qualified under the FECA, in the congressional district chosen to receive DCCC's proposed communications. The Commission viewed such expenditures as communications made without any consultation or communication with, or any request or suggestion of, any candidates seeking, in the selected districts, election to the House of Representatives. The Commission has stated, in AO 1984-15, that, although consultation or coordination with a candidate is permissible, it is not required in order for political party committees to make section 441a(d) expenditures.

The Rhode Island Citizens mailer is similar to the DCCC proposed mailer in AO 1985-14 in many respects. The Rhode Island Citizens mailer identifies by name a specific Democratic representative, Fernard St Germain, just as the DCCC proposed to name a specific Republican Congressman in its AO request. Both mailers criticize the records of the representative. The Rhode Island Citizens mailer criticizes Representative St Germain for allegedly using his public position to help wealthy investors and thereby amass a multimillion dollar personal fortune. The DCCC mailer criticizes a named representative for his views on the coastal environment and the oil industry. The Rhode Island Citizens organization distributed its mailer to Representative St Germain's first congressional district constituents, just as the Commission assumed the DCCC would disseminate its mailer to part or all of the district represented by the identified Congressman.

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There are some differences, however, between the Rhode Island Citizens mailer and that proposed by the DCCC in AO 1985-14. The DCCC proposed mailer included references to an election by its inclusion of a list of campaign contributions from the oil industry to the named representative. The Rhode Island Citizens mailer does not directly refer to an election. It states that Representative St Germain must disclose his taxes and finances because "[t]o do otherwise would bring an end to our efforts to rid our government of corruption and those who seek personal gain." The mailer's statement about ridding the government of corruption is a reference to an election in that one way to remove Congressman St Germain would be to vote him out of office.

The DCCC proposed mailer included a reference to "Republican rhetoric": "Don't be fooled by Republican rhetoric." The Rhode Island Citizens mailer does not make reference to any political party by name. Instead, it notes that "public officials of both political parties have given the public a complete financial accounting of themselves." This difference may not be a significant one, however. AO 1985-14 does not state what aspect of the proposed mailer constituted an electioneering message. It may be that the mailing as a whole conveyed an electioneering message. Similarly, the Rhode Island Citizens mailing conveys an electioneering message thus constituting a section 441a(d) expenditure by NRCC. Therefore, the Office of General Counsel recommends that the Commission find reason to believe there is a violation of 2 U.S.C. § 441a(d).

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The complainant next alleges that the mailing should have included a § 441d disclaimer. As stated above, the complainant alleges NRCC paid for the mailings. The complainant contends that the NRCC intended to conceal its involvement in the mailing, party to avoid the § 441a(d) limit, and, therefore, did not include a disclaimer on the mailing as required by 2 U.S.C. § 441d. The complainant contends that NRCC willfully violated section 441d.

NRCC responded to the allegation stating that the mailing does not require a § 441d notice. The respondent argues that § 441d(a) notices are required only if the communication expressly advocates the election or defeat of a clearly identified candidate or if it solicits contributions. NRCC argues the mailing in this case does neither.

Section 441d requires that when a person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, the communication must state clearly the name of the person paying for the communication, and whether any candidate or candidate's committee authorized the communication. 2 U.S.C. § 441d(a)(3). Section 109.1(b)(2) of the regulations defines express advocacy as a message that advocates election or defeat, including such expressions as "vote for," "elect" or "defeat." The issue is whether the St Germain mailing expressly advocates the election or defeat of a clearly identified candidate, thus requiring a section 441d disclaimer.

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The Supreme Court, in Buckley v. Valeo, 424 U.S. 1 (1976), defined express advocacy as "communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" Buckley v. Valeo, 424 U.S. at 44 n.52. In the instant case, Rhode Island Citizens mailer does not appear to expressly advocate the defeat of a candidate for Federal office in words which fall within the scope of the examples listed in Buckley and incorporated by Commission regulation § 109.1(b)(2). The mailer discusses articles in The Wall Street Journal and The Providence Journal-Bulletin charging that "Congressman St Germain has amassed a multimillion dollar personal fortune by using his public position to help wealthy investors." The mailer continues, saying the people of Rhode Island have a right to know if Congressman St Germain is trying to hide something and to know the truth. The mailer concludes by asking the person reading the mailer, along with other members of that person's household, to sign a petition at the bottom of the mailer. The petition urges Representative Dixon, Chairman of the House of Representatives Ethics Committee, to conduct an investigation into the accusations against Representative St Germain and to disclose his finance and tax records.

A fair reading of the Rhode Island Citizens' mailer does not lead to the conclusion that it expressly advocates Representative St Germain's defeat in an election. The mailer makes disparaging remarks about Representative St Germain, citing newspaper

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articles that accuse him of using his position to help wealthy investors and amass millions of dollars for himself. The mailer continues with a petition calling for an investigation of Representative St Germain by the U.S. House of Representatives. Although the reader is left with the impression that Representative St Germain has not conducted himself appropriately in office, and that he may not be the kind of man the reader wants as a representative in Congress, there is no statement expressly calling for his defeat in any federal election. Thus, the mailer does not require the inclusion of a § 441d disclaimer, and, therefore, the Office of General Counsel recommends that the Commission find no reason to believe a violation of section 441d has occurred.

The final allegation is that John A. Holmes, Jr. is a candidate for Representative St Germain's seat but has failed to register as a candidate. The complainant maintains that the activities such as the mailing, television advertisements and a poll conducted by the RNC constitute "a coordinated and concerted effort by Respondents to promote the nomination and election of John A. Holmes, Jr. to replace" Representative St Germain. (Page 6 of the attachments). The cost of these expenditures, Complainant asserts, exceeds the threshold requiring registration as a candidate under section 431(2) of the Act. The complainant further argues that the expenditures are not testing the water expenditures.

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According to the complainant, the mailing paid for by the NRCC is an expenditure allocable to the limitation applicable to NRCC expenditures on behalf of the Republican general election candidate under § 441a(d). The NRCC, the complainant alleges, coordinated the expenditures with Mr. Holmes through one of his close political associates. This associate established what the complaint calls NRCC's "'front' organization," Rhode Island Citizens. Attached to the complaint is an article from The Providence Journal-Bulletin which states that Sandra Winslow and Thomas J. Cashill, members of Rhode Island Citizens, worked out the mailer. The article describes Mr. Cashill as "a close friend of Republican state Chairman John A. Holmes, Jr., who is expected to be the GOP First District nominee." (Page 16 of the attachments). The complainant concludes that this is evidence of Mr. Holmes' involvement with and consent to the preparation and dissemination of the mailer. Complainant alleges that because the mailer cost at least $10,000, Mr. Holmes has crossed the $5,000 threshold set forth in section 431(2) for becoming a candidate. If these allegations are true, Mr. Holmes has violated section 432 by his failure to register as a candidate.

The complainant argues that the testing the water exceptions to the terms "contribution" and "expenditure" do not apply to the payments for the mailer. Pursuant to the testing the water regulations activity cannot be conducted through direct political advertising designed to promote an individual's candidacy. 11 C.F.R. 100.7(b)(1)(i). Again the complainant relies on AO 1985-14 to support its view that the expenditure for the mailer is an

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expenditure by a party committee subject to section 441a(d). DCCC alleges that the expenditure was coordinated with Mr. Holmes.

NRCC, in its response to the complaint, argues that the cost of the mailer is not allocable to any candidate or potential candidate. This is because the mailer is a comment on the actions and record of Representative St Germain and contains no electioneering message. The mailer does not, NRCC maintains, advocate the election or defeat of any candidate, nor does it solicit any contributions. NRCC observed that based upon the reasoning of AO 1985-14, the payments for the mailer are not contributions to Mr. Holmes.

Mr. Holmes, in his response, stated that "[a]t no time material to the allegations in the complaint" has he been a candidate for Representative for the first district of Rhode Island. He states that he did not coordinate or cooperate with the NRCC, the RNC or Rhode Island Citizens. They conducted their activities, according to Mr. Holmes, without seeking or obtaining his consent, nor did he know about their activities.

Section 432(e)(1) requires a candidate for Federal office to designate in writing a political committee to serve as the principal campaign committee of the candidate. 2 U.S.C. § 432(e)(1). The candidate must designate a principal campaign committee within 15 days after becoming a candidate. 2 U.S.C. § 432(e)(1).

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The Act defines a candidate as an individual seeking nomination for election, or election, to a Federal office. 2 U.S.C. § 431(2). If an individual has either received contributions or has made expenditures in excess of $5,000, he or she is deemed to be seeking nomination for election or election. 2 U.S.C. § 431(2)(A). An individual is deemed also to be seeking nomination for election, or election, if he or she consents to having another person receive contributions or make expenditures on his or her behalf and if either the contributions or expenditures aggregate in excess of $5,000. 2 U.S.C. § 431(2)(B). The Act defines the term person to include a committee. 2 U.S.C. § 431(11).

Mr. Holmes has not designated a principal campaign committee. Mr. Holmes has not become voluntarily, therefore, a candidate under the FECA. If he is a candidate, then, it would be because he has received contributions or made expenditures in excess of $5,000, as section 431(2)(A) sets forth, or because he has consented to having another person receive contributions or make expenditures on his behalf, in an aggregate amount in excess of $5,000.

The complainant does not allege that Mr. Holmes made expenditures in excess of $5,000. The allegation is that the NRCC expenditure of $10,000 for the mailer was coordinated with Mr. Holmes. Because the newspaper article describes Mr. Cashill, a participant in the establishment of Rhode Island Citizens, as a close friend of Mr. Holmes, DCCC alleges the expenditure was coordinated with Mr. Holmes.

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Mr. Holmes has stated that he did not coordinate or cooperate with the NRCC or Rhode Island Citizens, nor is there any evidence he did. The only evidence of coordination offered by the complainant is the characterization in the newspaper article of Mr. Cashill as a close friend of Mr. Holmes. Another article states that Mr. Cashill is a close friend of Mr. Holmes and that Mr. Holmes "is gearing up to run against St Germain."

The assertion by the complainant of a close friendship without more concrete evidence is insufficient to show that the NRCC, through Mr. Cashill, and Mr. Holmes coordinated the expenditure for the mailing. The complainant has not provided evidence that Mr. Holmes consented to having another person make expenditures on his behalf, and Mr. Holmes has stated that he did not consent to any expenditures by NRCC. Moreover, there is no other indication of the alleged coordination in the record.

Finally, the complainant alleges Mr. Holmes is a candidate because the RNC paid $15,000 for a poll "designed to lay the foundation for Mr. Holmes' candidacy." DCCC alleges that, despite statements by Mr. Holmes that the poll will help him decide whether to become a candidate, Mr. Holmes is already a candidate who has not followed FECA procedure. The complainant argues that the poll should not be considered a testing the waters activity.

Section 100.8(b)(1)(i) of the Commission's regulations excludes payments made solely to determine whether an individual should become a candidate from the definition of the term

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expenditure. That section states that conducting a poll is a permissible activity exempt from the definition of the term expenditure, if it is conducted to determine whether an individual should become a candidate. If the individual later becomes a candidate, his or her principal campaign committee must report the testing the waters activity on its first report filed with the Commission. 11 C.F.R. 100.8(b)(1)(i). The exemption does not apply to payments indicating that an individual has already decided to become a candidate for a specific office. 11 C.F.R. 100.8(b)(1)(ii). An individual is considered to have decided to become a candidate if he or she makes or authorizes written or oral statements referring to him or her as a candidate for a particular office. 11 C.F.R. 100.8(b)(1)(ii)(C).

Mr. Holmes, according to the newspaper articles attached to the complaint, said that the poll will help him decide whether to run against St Germain. Although one article states that Mr. Holmes "...is expected to the GOP First District nominee," Exhibit C to the complaint, as discussed above, there is no evidence in the complaint that Mr. Holmes has already decided to become a candidate. Also, there is no evidence Mr. Holmes made or authorized statements referring to him as a candidate. In addition, Mr. Holmes has stated in his response to the complaint that he has not been a candidate for Representative St Germain's seat. Thus the evidence does not support a finding that Mr. Holmes was a candidate for purposes of the FECA, and, therefore, the Office of General Counsel recommends that the Commission find no reason to believe Mr. Holmes has violated 2 U.S.C. § 432(e)(1) by failing to register as a candidate.

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III. General Counsel's Recommendations

The Office of General Counsel recommends that the Commission:

1. Find reason to believe the National Republican Congressional Committee and Jack McDonald, as treasurer, and the Republican National Committee and William J. McManus, as treasurer, violated 2 U.S.C. § 441a(d).

2. Find no reason to believe the National Republican Congressional Committee and Jack McDonald, as treasurer, and the Republican National Committee and William J. McManus, as treasurer, violated 2 U.S.C. § 441d.

3. Find no reason to believe John A. Holmes, Jr. violated 2 U.S.C. § 432(e)(1) and close the file with respect to him.

4. Approve and send the attached letters.

Charles N. Steele
General Counsel

May 16, 1986
Date

BY: Kenneth A. Gross
Associate General Counsel

Attachments
1. Mailing
2. Complaint
3. NRCC response
4. RNC response
5. Holmes response
6. Proposed letters

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Exhibit K

RHODE ISLAND CITIZENS FOR ACCOUNTABILITY IN GOVERNMENT

Dear Taxpayer:

You may have heard that our Congressman, Fernand St Germain, has been accused of some very serious charges.

According to the *Wall Street Journal*, *The Providence Journal Bulletin*, and other respected newspapers, Congressman St Germain has amassed a multimillion dollar personal fortune by using his public position to help wealthy investors.

It's time to clear the air.

That's why Rhode Island Citizens for Accountability in Government are asking Congressman St Germain to disclose in detail his financial records and make available to the public his tax returns.

Unfortunately, St Germain has refused. And that's bad because the people of Rhode Island have a right to know if our Congressman is telling the truth.

We also have a right to know if St Germain is trying to hide something.

In past years, public officials of both political parties have given the public a complete financial accounting of themselves.

Some who come quickly to mind are Richard Israel when running for Attorney General, John Hawkins for U.S. Senate, Joseph Garrahy for Governor, Vincent Cianci, Jr. for Mayor of Providence, and incumbent Mayor, Joseph Paolino, Jr.

If they found this course suitable, why not Congressman St Germain?

Just at a time Rhode Island citizens are demanding our leaders be honest and above reproach, we cannot afford to have this dark cloud hanging over our heads.

There's only one solution: Congressman St Germain must come clean by fully disclosing his taxes and finances. To do otherwise would bring an end to our efforts to rid our government of corruption and those who seek personal gain.

That's why we—Rhode Island Citizens for Accountability in Government—urge you and other members of your household to sign the attached petition and mail it to us immediately.

The petition asks the U.S. House of Representatives' Ethics Committee to officially investigate these serious charges and further demands that St Germain publicly disclose his taxes and finances.

The people of Rhode Island deserve to know the truth. The time for answers is now.

Sincerely,

Sandra Winslow

Sandra Winslow, Chairperson

P.S. Please sign the petition and mail immediately.

To: Honorable Julian Dixon, Chairman

I (we), the undersigned, urge the Ethics Committee of the House of Representatives to conduct an official investigation into the accusations against Congressman St Germain and further ask that Mr. St Germain's tax and finance records be fully disclosed. Thank you.

1. _____ (signature) Print name _____

2. _____ (signature) Print name _____

3. _____ (signature) Print name _____

Address _____

City _____

State _____ Zip _____

Telephone (____) _____

Attachment 1

①

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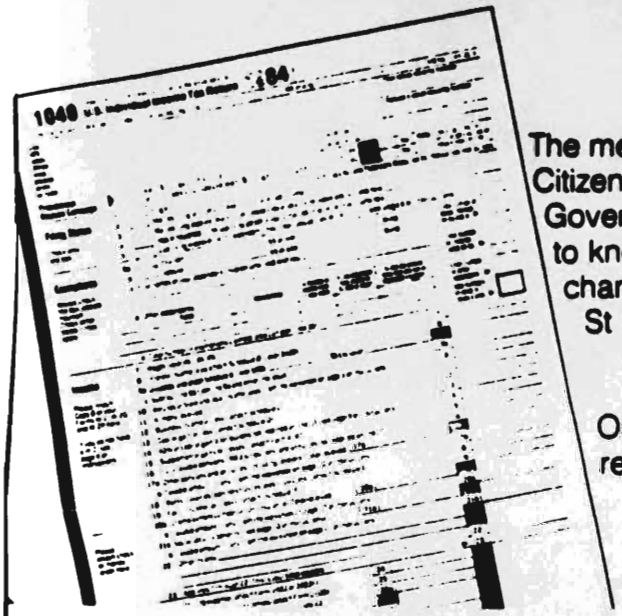
It's time to clear the air . . .

Rhode Island Citizens For
Accountability in Government
P.O. Box 28572
Providence, Rhode Island 02908

Bulk Rate
U.S. Postage
PAID
Providence, R.I.
Permit 601337

Tell us the *truth*, Congressman St Germain.



The members of Rhode Island Citizens for Accountability in Government—a non-partisan group—want to know the truth about the financial charges made against Congressman St Germain.

Only you, Congressman, can set the record straight.

No Postage Necessary If Mailed In The United States

BUSINESS REPLY MAIL
First Class Permit No. 1408 Providence, R.I. 02908

Postage will be paid by Addressee

RHODE ISLAND CITIZENS FOR ACCOUNTABILITY IN GOVERNMENT
P.O. BOX 28572
PROVIDENCE, RHODE ISLAND 02908-9990

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COMPLAINT

BEFORE THE

FEDERAL ELECTION COMMISSION

I. INTRODUCTION

The Democratic Congressional Campaign Committee ("DCCC") files this complaint challenging numerous and significant violations of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431 et seq. ("FECA"), and related regulations of the Federal Election Commission, by the National Republican Congressional Committee ("NRCC"); the Republican National Committee ("RNC"); Mr. John A. Holmes, Jr., a candidate for nomination for election to the House of Representatives from the First District of Rhode Island; and other individuals and organizations whose identities may be revealed in connection with a full investigation by the Commission ("Respondents").

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GENERAL COUNSEL

II. FACTS

DCCC attaches, for the review of the General Counsel, a series of clippings from various news organizations reporting on recent activities of Respondents. These Respondents seek the defeat in the 1986 general election of the First District incumbent Congressman Fernand St Germain and the election of Republican John A. Holmes, Jr. To this end, Respondents NRCC and RNC, in particular, are expending substantial funds, apparently in excess of $40,000 (forty thousand dollars).

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Attachment 2

III. VIOLATIONS OF LAW

A. NRCC Evasion of §441a(d) Limits in Connection With "Direct" Mailing Attacking the Record of Mr. St Germain

Commission Advisory Opinion 1985-14, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5819 (May 30, 1985), is dispositive on this issue. Direct mailings of this nature, even if framed without an explicit "electioneering" message, are subject in full to the limits which apply to a party's support of its general election candidates. See also 2 U.S.C. §441a(d).

NRCC apparently does not intend to comply with these limits. In the news article marked Exhibit F, an NRCC "field representative" is either unaware of or indifferent to the Commission's holding in Advisory Opinion 1985-14. This NRCC official contends that the apparent absence from the mailing of both a formally declared Republican candidate and of an explicit "electioneering" statement obviates the need for an allocation to the limits. Advisory Opinion 1985-14 demonstrates that this is a false, likely a wilfully false, reading of the law and of the Commission's position on the law.

B. NRCC Violation of "Disclaimer" Requirements

NRCC's mailing has been prepared without any reference to a conceded fact: NRCC paid for this mailing in full, including NRCC staff time in "polishing" (Exhibit C) the written text and handling the mechanical requirements for mailing.

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Democratic Member of Congress from the First District of Rhode Island. Because of the nature of these activities, including their clear coordination with Mr. Holmes and his closest associates, the expenditures associated with these activities have exceeded the threshold requirements for the formal registration of Mr. Holmes' candidacy under the FECA. 2 U.S.C. §431(2). Conversely, none of these actions, taken alone or in context, can properly be qualified as expenditures for "testing the waters" which would otherwise be available as a basis for avoiding registration at this time.

1. The Mailing

The direct mailing funded by NRCC, and described fully elsewhere in this Complaint, constitutes an allocable expenditure subject to the limitations which apply to NRCC's spending on behalf of its First District general election candidate under §441a(d). See p. 3 of this Complaint. Moreover, the making of this expenditure was coordinated closely with Mr. Holmes, through one of his close political associates who participated in the establishment of NRCC's "front" organization, Rhode Island Citizens for Accountability in Government. Specifically, news reports (Exhibits C and E) indicate the involvement in this scheme of Mr. Thomas J. Cashill, described as a "close friend of Republican State Chairman John A. Holmes, Jr., who is expected to be the GOP First District nominee." (Exhibit C.) A Commission investigation pursuant to this Complaint will reveal, as these

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expenditure with any potential candidate or candidates, it did so. Mr. Holmes' involvement with this expenditure, his consent to this expenditure, required him to abandon the pretense of testing the waters and to register as a candidate under the FECA with full disclosure obligations under the law. In failing to do so, Mr. Holmes violated the FECA.

2. The Poll

News reports also reflect the RNC's payment for a $15,000 (fifteen thousand dollar) poll designed to lay the foundation for Mr. Holmes' candidacy. (Exhibits D and E.) While these reports also incorporate statements by Mr. Holmes suggesting that this poll will only aid him in making a decision on candidacy, the circumstances indicate otherwise.

As stated, all of the activities described in this Complaint must be taken together, as one concerted and coordinated program to promote Mr. Holmes' candidacy prior to formal declaration -- and undermine the candidacy of his expected opponent, incumbent Congressman St Germain. These activities include the television advertisements, the mailing and the poll, all of which are critical elements to a full fledged campaign for nomination and election to federal office. Moreover, in all cases, funding for these purposes is being supplied by the National Republican Party by two of its affiliated committees, NRCC and RNC. The legal significance of RNC's payment of the poll for Mr. Holmes cannot be divorced from this context.

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clarification of of the law, and particularly §441a(d), as it applies to both the Democratic and Republican Parties, and no less to NRCC and RNC. Even this enforcement effort appears to have come to naught, as the national Republican Party is currently ignoring it altogether.

DCCC requires action on its Complaint now, not six months or one year from now. Any delay will render the party financing limitations of the law a "dead-letter" in 1986.

Respectfully submitted,

PERKINS COIE

Robert F. Bauer

Robert F. Bauer
Counsel, Democratic Congressional
Campaign Committee

1328B

DISTRICT OF COLUMBIA

Subscribed and sworn to before me this 20th day of December 1985.

Darlene F. Symms
Notary Public

My commission expires: 3/31/89

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RHODE ISLAND CITIZENS FOR ACCOUNTABILITY IN GOVERNMENT

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It's time to clear the air.

That's why Rhode Island Citizens for Accountability in Government are asking Congressman St Germain to disclose in detail his financial records and make available to the public his tax returns.

Unfortunately, St Germain has refused. And that's bad because the people of Rhode Island have a right to know if our Congressman is telling the truth.

We also have a right to know if St Germain is trying to hide something.

In past years, public officials of both political parties have given the public a complete financial accounting of themselves.

Some who come quickly to mind are Richard Israel when running for Attorney General, John Hawkins for U.S. Senate, Joseph Garrahy for Governor, Vincent Cianci, Jr. for Mayor of Providence, and incumbent Mayor, Joseph Paolino, Jr.

If they found this course suitable, why not Congressman St Germain?

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The petition asks the U.S. House of Representatives' Ethics Committee to officially investigate these serious charges and further demands that St Germain publicly disclose his taxes and finances.

The people of Rhode Island deserve to know the truth. The time for answers is now.

Sincerely,

Sandra Winslow

Sandra Winslow, Chairperson

P.S. Please sign the petition and mail immediately.

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The petition asks the
investigate these serio
taxes and finances.

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EXHIBIT D

GOP Commissions Poll to Learn If Holmes Can Unseat St Germain

PROVIDENCE (AP) — The Republican National Committee will pay for a poll to determine if GOP state chairman John A. Holmes Jr. has a chance to unseat Rep. Fernand St Germain.

Holmes said Friday the 40-question survey next week of First Congressional District voters will cost $15,000. It will be conducted by Decision Making Information of McLean, Va., a firm owned by Richard Wirthlin, President Reagan's pollster.

Holmes, appearing on WJAR-TV's "10 News Conference," said he will run if the voters agree with his perception that St Germain is out of touch with the state.

"I think he's got one interest, and one interest only, and that's the banking community," Holmes said. "I don't know what that is doing for the people who live in Woonsocket, Pawtucket and Central Falls." St Germain is chairman of the House Banking Committee.

The GOP chairman said Joe Scanlon, St Germain's longtime aide, does most of the Democrat's work.

Holmes said he thinks St Germain could raise a $1.5 million campaign fund. But Holmes said he could wage a competitive challenge with about $500,000.

On a state government matter, Holmes said Gov. Edward D. DiPrete could have escaped some criticism by hiring and appointing fewer people from his home city of Cranston.

But Holmes said DiPrete is getting the job done and "that's what it's all about."

GOP head Holmes finances poll on race vs. St Germain

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But Holmes said DiPrete is getting the job done and "that's what it's all about."

Pawt Times 8/5/82

EXHIBIT F

10/20/85 THE PROVIDENCE SUNDAY JOURNAL

NRCC provides clipping service on St Germain for House, gratis

By M. CHARLES BAKER
Washington Bureau Chief

PROVIDENCE — The National Republican Congressional Committee, which is trying [illegible] J. St. Germain, for [illegible] has sent every House member a package of newspaper clippings about the financial controversy swirling around the Rhode Island Democrat.

Douglas McAuliffe, GOP representative, Thursday claimed this organization the NRCC is out to get St Germain and wants to create media for him among his colleagues and on the campaign trail.

"Any time we have a chance to do something, we're going to do it," McAuliffe said in a telephone interview from Washington.

St. Germain's comment on the mailing, said Joseph Sanzone, his top aide, was, "It's politics."

Most of the clippings relate either to last month's *Wall Street Journal* report that St Germain has become a millionaire with help from people and institutions that have joined from his official activities — by dodging any improprieties — or in follow-ups regarding an investigation of the congressman that the House Ethics Committee reportedly has launched.

Yet some of the clippings, from the *Journal-Bulletin* and the *Evening Times* of Pawtucket, go back to a 1976 flap about the congressman received illegal campaign help from the Perlmut Corp.

(Eventually, the company, admitting that its employees in 1976 distributed literature during regular working hours that urged the re-election of St Germain, paid the Federal Election Commission a $100 civil penalty. The FEC cleared St Germain of any wrongdoing.)

As for why stories about the Perlmut incident were included, McAuliffe said it was to demonstrate a further link between St Germain and developer Roland Perlmut. The *Wall Street Journal* detailed a close relationship, both in politics and in investments, between St Germain and Perlmut.

The package of clippings was sent to congressmen with a covering letter from Joseph R. Gaylord, NRCC executive director, outlining the St Germain-*Wall Street Journal* situation, mentioning that the *Providence Journal* and *Washington Post* have editorialized on the subject, and noting that Common Cause has sought an ethics panel probe. The articles were being enclosed, Gaylord wrote, for "your further review and interest."

McAuliffe, who is responsible for overseeing 100 House races in the Northeast, said Rhode Island's First District is one of 10 on which he is concentrating. "My job is to do whatever I can to get Republicans elected to Congress, and I choose vulnerable seats and I think Freddy St Germain is more vulnerable than many people realize," he said.

Among people he works with are Barrington's Thomas J. Cahill, who Monday is coordinating monitoring St Germain and pacing the way for Republican challengers. Cahill is a close friend of GOP state chairman John A. Holmes Jr., who is gearing up to run against St. Germain.

McAuliffe said the home went to all congressmen because "we're trying to make all the members aware these allegations exist. Freddy St Germain probably has a reputation there of being a strong, self-serving Democratic chairman, and I think it's enough to rile at least 182 Republicans in the House and probably a number of Democrats, conservative Democrats."

Financial/political controversy, combined with an ethics probe, eventually could weaken St Germain's stature among his colleagues, McAuliffe said. He said this could affect the congressman's ability to make legislative deals and could result in House members from around the country showing more interest in defeating him.

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GCC# 9764

National Republican Congressional Committee

320 FIRST STREET, S.E. • WASHINGTON, D.C. 20003 • 202-479-7000

GENERAL COUNSEL
Jan W. Baran

LEGAL COUNSEL
Benjamin L. Ginsberg

February 19, 1986

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RECEIVED
GENERAL COUNSEL

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

Dear Mr. Steele:

Re: MUR 2116

This letter and the attached exhibits are submitted by the National Republican Congressional Committee ("NRCC") pursuant to 2 U.S.C. 437g(a)(1) in response to a complaint filed by the Democratic Congressional Campaign Committee ("DCCC") denominated Matter Under Review ("MUR") 2116. For the reasons set forth herein, the Federal Election Commission ("Commission") should find no reason to believe that NRCC has violated the Federal Election Campaign Act, as amended ("Act").

Paid for by the National Republican Congressional Committee. Not produced at government expense

Attachment 3

I. FACTS

A. The Article

On September 11, 1985, The Wall Street Journal published a front page article concerning Congressman Fernand St Germain entitled "Making a Fortune/As a Private Investor, House Banking Chief Has Grown Very Rich/Rep. St Germain Has Had Lots of Help From Those He Has Aided Officially." (See Attachment A).

The article, by reporters Brooks Jackson and Tim Carrington, chronicles in more than 20,000 words how the powerful chairman of the House Banking Committee has garnered a personal fortune during his 24-year career as the elected Representative of Rhode Island's First Congressional District. The article states:

> An examination of his [St Germain's] private investments shows that, in acquiring his fortune, the congressman has had lots of investment help from people and institutions that have benefited from his official actions.
>
> As House banking chairman, the 57-year-old Mr. St Germain is among Congress' most powerful lawmakers. He presides with unusually strong authority over a committee that routinely handles multibillion-dollar matters that shape the nation's fast-changing financial system. He also is a force to be reckoned with at federal banking agencies.

Wall Street Journal, Sept. 11, 1985, at 1, col. 1.

The Journal article reports that the founder and chairman of a Florida savings & loan institution included Congressman St Germain in several "potentially lucrative real estate investments" that were not offered to the public, while Congressman St Germain had his staff contact the federal Home Loan Bank Board on matters

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concerning the chairman's savings & loan; that Congressman St Germain bought five restaurants with money from Rhode Island lending institutions "that put up nearly 100% of the purchase price and assumed most of the risk"; and that Congressman St Germain is "still reaping profits from earlier, publicized real-estate investments" arranged by a Rhode Island developer "who himself profited from federally subsidized housing developments that the congressman helped obtain for the state." Id.

The Journal article also states:

> [A]s his power has grown, so has his wealth. (The Internal Revenue Service is investigating what it terms 'abusive' tax shelters into which the congressman put $120,000 of his money for $405,000 in promised tax deductions).

Id.; see Exhibit B.

B. The Public Debate

The reaction to the report concerning St Germain's record and actions as an elected public official was swift, both in Rhode Island and around the country. (See Exhibits C - J). Newspapers and members of the public alike commented on the record and actions of the chairman of the House Banking Committee.

1. The Media

On September 13, 1985, the Providence Journal Bulletin editorialized "on the congressman's growing affluence in tandem with his ascendancy in the U.S. House" and the public's need to be sure of its legitimacy. (See Exhibit C). The editorial, entitled "Mr. St Germain Can Help Clear the Air", said in part:

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> All he [St Germain] needs to do is what a number of other major Rhode Island political candidates have done in past years: publicize his income tax returns and net worth statements. Although such information is properly confidential for average citizens, its disclosure by public office-seekers is hardly unwarranted. This is particularly true in the case of an official whose private income has been the subject of repeated question.
>
> [Noting several Rhode Island public officials who made their returns public, the editorial asked:] If they found this course suitable, why not Mr. St Germain?
>
> [T]he congressman ought to furnish his income tax returns and net worth statement for a more accurate reading. Other candidates have adopted this as a good practice. It would seem especially appropriate for someone in Mr. St Germain's situation.

The Washington Post, in editorials on September 18, 1985 (see Exhibit D) and September 22, 1985 (see Exhibit E), called upon the House Committee on Standards of Official Conduct to investigate Congressman St Germain's actions:

> The question is whether Mr. St Germain, chairman of the House Banking, Finance and Urban Affairs Committee, has used his high position to enrich himself improperly.
>
> These questions go to the heart of the integrity of the House and of the Democratic majority that elected Mr. St Germain to his chairmanship.... The substantive responsibilities of a person in Mr. St Germain's position are as great as those of any member of Congress. If he is innocent of the charges, he deserves to be publicly cleared of them; confidence in his actions is at stake, as is fundamental fairness to the man. If it is established that he has undermined his ability to fulfill those responsibilities by attempting to enrich himself improperly, it would be a grave dereliction of duty for Congress not to take stern disciplinary action.

See Exhibit E.

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In the same vein, Common Cause, the self-styled citizens lobby, issued a September 13, 1985 press release (Exhibit F) and sent letters to all members of the House Ethics Committee. (Exhibit G). Common Cause commented on the record and actions of an elected public official, and called for "an investigation concerning the allegations made about Rep. St Germain to determine if House rules have been violated and to report publicly on its findings." Id.

The editorials and requests for investigations attached as Exhibits C - J are all commentary and reports on the record and actions of an elected public official. They do not advocate the election or defeat of any candidate or solicit political contributions.

2. The NRCC

The NRCC, as an unincorporated association authorized by the Republican members of the United States House of Representatives, is obviously concerned with the reputation and effectiveness of that institution. Accordingly, the NRCC's duties and rights include constructive public commentary about the events of the day and the House as an effective body.

The NRCC also is an organization concerned with the performance, actions and the record of public officials. In the wake of the reports in the Wall Street Journal, the Providence Journal Bulletin and other newspapers in Rhode Island and around the nation, the NRCC participated in the public debate. Its views were those shared by the media and Common Cause. The NRCC commented on issues of public importance by: (1) aiding a local citizens group

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which requested assistance for a mailing about Congressman St Germain (Exhibit K), and (2) producing and broadcasting a television message calling upon an elected public official to release information about his tax returns in order to clear up serious allegations made about his conduct while in public office, see, infra. at 8-9.

In response to a request from the Rhode Island Citizens for Accountability in Government ("Rhode Island Citizens"), NRCC assisted that organization with a mailing. As a condition for spending its funds, NRCC received assurances from Rhode Island Citizens that it would not advocate the election or defeat of any candidate.

As of January 28, 1986, the only announced candidates in Rhode Island's First Congressional District were Congressman St Germain and Edward P. Beard, a former congressman who announced his challenge to St Germain following the revelations of St Germain's actions. Both are Democrats. There are to this day no Republican candidates.

On February 17, 1986, Rhode Island Citizens sent to the House Committee on Standards of Official Conduct the signatures of 2,080 residents of the First Congressional District who responded to the mailing calling for an official investigation into the accusations against St Germain and for St Germain to disclose fully his tax and financial records. See Providence Journal, Feb. 18, 1986, at A7, col. 2.

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II. ARGUMENT

The DCCC alleges that: the "'Direct' mailing attacking the record of Mr. St Germaine" constitutes spending by NRCC subject to the spending limits of 2 U.S.C. 441a(d); the mailing (Exhibit K) lacked a required disclaimer, and this activity should have forced an individual, who is not an announced candidate, to announce his candidacy.

A. The Limits of 2 U.S.C. 441a(d) Are Not Implicated.

Section 441a(d) of Title 2 of the United States Code applies to expenditures made in connection with the campaigns of candidates for federal office. In Advisory Opinion 1985-14, the Commission "concluded that the limitations of section 441a(d) would apply where the communication both (1) depicted a clearly identified candidate and (2) conveyed an electioneering message." Fed. Election Camp. Fin. Guide (CCH) ¶ 5819 at 11,185 (May 30, 1985) (citing Advisory Opinion 1984-15).

In that same advisory opinion, the Commission defined "electioneering messages" as "statements 'designed to urge the public to elect a certain candidate or party." Id. (citing United States v. United Auto Workers, 352 U.S. 567, 587 (1957)); see also Advisory Opinion 1984-62, Fed. Election Camp. Fin. Guide (CCH) ¶ 5813 at 11,169 (March 21, 1985). Neither the mailing nor the television message at issue contain anything that could be construed as an "electioneering message."

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1. The Mailing

The mailing in this case contains no "electioneering message" as defined previously by this Commission and the courts. In Advisory Opinion 1985-14, the Commission's latest decision on the subject, the mailing refers to "Republicans" and "your Republican congressman" and urges the reader to contact the "Republicans in Congress." Some versions also had the tag line "Vote Democratic." The mailing at issue in this case has no reference to any political party. See Exhibit K. Nor is there any reference to any election, either past or future. Id. There is no reference in the mailing to the election or defeat of any candidate. Id. There is no solicitation for any money in the mailing, nor any mention of St Germain's political campaign finances. Id. There is no Republican candidate in the First Congressional District of Rhode Island.

It is true that the mailing by Rhode Island Citizens (and the NRCC television message) identifies a public official and discusses his actions and record as a member of the United States House of Representatives. That is permitted under the Act and is the First Amendment right of the press in Rhode Island, the press around the country, Common Cause, Rhode Island Citizens, the NRCC and all citizens of this country.

The statements complained of by DCCC are indistinguishable from press reports, editorials and public comments. For example,

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the mailing states on its cover: "It's time to clear the air." (See Exhibit K). The Providence Journal Bulletin's September 13, 1985 editorial is entitled: "Mr. St Germain Can Help Clear the Air." (Exhibit C).

The mailing reports on the articles in the Wall Street Journal and the Providence Journal Bulletin and repeats their finding that "Congressman St Germain has amassed a multimillion dollar personal fortune by using his public position to help wealthy investors." Exhibit A. It requests that readers "sign the attached petition and mail it to us immediately." The petition asks the United States House of Representatives' Committee on Standards of Official Conduct to "investigate these serious charges" officially and further demands that St Germain publicly disclose his taxes and finances. That is nothing more than what Common Cause urged in its letter to the House Committee on Standards of Official Conduct and in its accompanying press release. Exhibits F, G.

NRCC's financial support for such mailings is not subject to any limitation under section 441a(d).

2. The Television Message

The DCCC argument that the television message at issue promotes the candidacy of John Holmes and triggers 2 U.S.C. 441a(d) is unsubstantiated by any citation to the message itself. The complete script of the message reads:

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cg: TAXES
dissolve
?

Evelyn C. Green	CONGRESSMAN ST GERMAIN WON'T BE OUT OF TROUBLE UNTIL HE RELEASES HIS INCOME TAX FORMS.
Ezida M. Silva	IF HE DOESN'T HAVE ANYTHING TO HIDE, IT DOESN'T DO HIM ANY HARM TO RELEASE THEM.
John J. O'Brien III	I THINK HE SHOULD OPEN UP HIS BOOKS. THAT WAY IF HE'S CLEAN HE'S CLEAN. . .IF NOT, WE GOTCHA'.
Evelyn C. Green	WHAT HE'S DONE MAY NOT BE ILLEGAL, IT SEEMS UNETHICAL, BUT WE WON'T KNOW UNTIL HE COMES CLEAN WITH THE PUBLIC.
super: Tell us the truth Congressman St Germain. disclaimer in (over 1040 tax form)	Ann: TELL US THE TRUTH CONGRESSMAN ST GERMAIN.

These are the statements of Rhode Island citizens interviewed at random. An examination of the statements shows that none mentions any political party. There is no reference to any election, past or future. There is no mention of the election or defeat of any candidate. There is no solicitation for any money, nor any mention of St Germain's political campaign finances. There is no mention of John Holmes, the purported "candidate."

This message cannot violate the Act since it does not concern the election of a candidate for the House. See Advisory Opinion 1985-14, Fed. Election Camp. Fin. Guide (CCH) ¶ 5819 at 11,185 (May 30, 1985). The broadcast contains no "electioneering

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message and no mention of any political party affiliation." Id. Accordingly, under AO 1985-14, this message does not implicate the Act and its broadcast is not a contribution.[1/]

B. No Notice is Required for the Mailing at Issue.

DCCC alleges that the mailing at issue requires a statutory notice.

Under 2 U.S.C. 441d(a) and 11 C.F.R. 110.11(a), notices are needed only if the "communications expressly advocate the election or defeat of a clearly identified candidate, or solicit any contribution."

The complaint does not, as it cannot, cite any language in the mailing that advocates the election or defeat of any candidate.[2/] The mailing does not solicit funds. The mailing does comment on the record and actions of an elected public official. But neither the mailing at issue nor, for example, the press release from Common Cause require notices under the Act.

1/ DCCC is correct that the television message included a sponsorship notice, since that is a prerequisite of the Federal Communications Act. The mailer at issue did not contain a notice because none was required. See 11 C.F.R. 110.11 and Section B, infra.

2/ The complaint also attempts to belittle the citizens group and its numerical strength, see Complaint at 4 n.1, as consisting of only "two founding members." On February 17, 1986, leaders of Rhode Island Citizens presented petitions signed by 2,080 persons to the House Committee on Standards of Official Conduct calling for an investigation into St Germain's actions and for the Congressman to release his tax returns. Providence Journal, Feb. 18, 1986, at A7, col. 2.

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C. Registration of a Candidate.

Since the activities alleged in the DCCC complaint consist of protected commentary on the actions and record of an elected public official, and do not contain an electioneering message, none of the costs of the activities are allocable to any candidate or potential candidate.[3/] In effect, the complaint is an attempt to stifle legitimate criticism by the Rhode Island Citizens for Accountability in Government and the NRCC about a controversial legislator.

The mailing and messages at issue in this matter address a matter of great public importance. But they do not advocate the election or defeat of any candidate. Nor do they solicit any funds. On the basis of Advisory Opinion 1985-14 payments for these activities are not contributions. Thus, they cannot create candidacy since the definition of a candidate in part presumes the receipt of contributions over a threshhold amount. 2 U.S.C. 431(2). Accordingly, any expenses paid by NRCC for these activities do not create candidacy for John Holmes or any other person.

3/ Assuming arguendo that any costs are allocated toward a candidate as a result of the mailing or the television message, then by the DCCC's logic they should be allocated to Edward P. Beard, the only announced candidate besides St Germain at the time of the mailing. NRCC, however, rejects the claim that a contribution has been made to any person.

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III. CONCLUSION

For the reasons set forth above the Commission should find no reason to believe that NRCC violated the Act.

Sincerely,

Jan W. Baran
General Counsel

Benjamin L. Ginsberg
Legal Counsel

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Making a Fortune

As a Private Investor, House Banking Chief Has Grown Very Rich

Rep. St Germain Has Had Lots of Help From Those He Has Aided Officially

The Summer Life in Newport

By Brooks Jackson
And Tim Carrington
Staff Reporters of The Wall Street Journal

"I'm here to represent Mr. and Mrs. Consumer, like my mother and dad."—Rep. Fernand St Germain, in an interview.

WASHINGTON — While Raleigh Greene's Florida savings and loan association was seeking federal permission to issue stock in 1983, Rep. Fernand St Germain's top aide was repeatedly phoning regulators to check on the progress of the application. When the sale was approved, the congressman bought more than $15,000 of the newly issued stock.

Such is the private financial life of Rep. St Germain (he doesn't use the conventional period in his last name), who is chairman of the House Banking Committee and self-proclaimed champion of consumers and common folk like his working-class parents. Ever so quietly, during his 24 years in the House, the Rhode Island Democrat has become a millionaire. An examination of his private investments shows that, in acquiring his fortune, the congressman has had lots of investment help from people and institutions that have benefited from his official actions.

Fernand St Germain

As House banking chairman, the 57-year-old Mr. St Germain is among Congress's most powerful lawmakers. He presides with unusually strong authority over a committee that routinely handles multibillion-dollar matters that shape the nation's fast-changing financial system. He also is a force to be reckoned with at federal banking agencies. And as his power has grown, so has his wealth. (The Internal Revenue Service is investigating what it terms "abusive" tax shelters into which the congressman put $120,000 of his money for $405,000 in promised tax deductions.

Close to the Vest

Mr. St Germain insists he has steered clear of ethical problems. "I have invested in diverse areas along with friends and business associates," he says. "At all times, I have been scrupulous to avoid conflicts." The congressman—who once boasted that his cards aren't close to his vest, "they're imprinted on my chest"—won't discuss many details of his personal holdings.

The analysis of his finances has been pieced together from his sometimes-incomplete financial-disclosure forms, from interviews, and from public records on file at the Securities and Exchange Commission in Washington and in more than a dozen state and county offices in Rhode Island, Florida, Texas, New York and Maryland. It includes these findings:

—Mr. Greene, the founder and chairman of Florida Federal Savings & Loan in St. Petersburg, Fla., arranged for Mr. St Germain to be included in several potentially lucrative real-estate investments in Florida. Meanwhile, Mr. St Germain's chief of staff contacted the federal Home Loan Bank Board on matters concerning Florida Federal.

Mr. Greene says he never asked Mr. St Germain to intervene on his behalf at federal agencies. He confirms that he invited the congressman into three land-ownership deals, which weren't offered to the public. "It's like anything else," Mr. Greene says. "You sit down with your buddies and say, 'Do you want in?' And you either say yea or nay."

—The foundation of Mr. St Germain's wealth, five International House of Pancakes restaurants, was bought with $1.3 million in mortgages from Rhode Island lending institutions that put up nearly 100% of the purchase price and assumed most of the risk. One lender then publicly praised Mr. St Germain's legislative help.

—Rep. St Germain is still reaping profits from earlier, publicized real-estate investments arranged by a Rhode Island developer, Roland Ferland, who himself profited from federally subsidized housing developments that the congressman helped obtain for the state.

Blue-Collar Constituents

The congressman still seeks to appeal to blue-collar constituents in his industrial hometown of Woonsocket. At a hearing last year, for example, he pounced on a witness who argued that a certain proposal was favored by a banker in Newport, part of Mr. St Germain's district. "Newport!" he sputtered. "That's where the millionaires have their mansions."

But Mr. St Germain has become a Newport millionaire himself, golfing there during the summer at country clubs, staying there at his recently acquired $200,000 condominium near the waterfront and dropping in at celebrity tennis matches and an America's Cup yacht christening. Newport's Republican Mayor Patrick Kirby marvels at the social blossoming of "the new Freddy."

In winter, the congressman has jetted with his wife on numerous speaking trips, for which lobbying and trade groups picked up the tab, to such sunny places as Puerto Rico, Boca Raton, Fla., and Hilton Head, S.C. He spends several weekends a year at his $138,900 condominium in a luxury high-rise building in St. Petersburg, Fla.

His holdings last year included restaurants valued at $1.9 million and a portfolio of stocks, real-estate partnerships and money-market mutual funds that he valued at between $325,017 and $9[illegible],000. He recently bought two more Florida condominiums as rental properties, a beach place near Punta Gorda for $190,000 and a golf-resort property in Titusville for $47,900.

Mr. St Germain didn't inherit his wealth; his father was a foreman in a dye plant. A lawyer, he didn't marry rich or make his fortune in the private sector. In 1964, after his congressional pay was raised to $30,000 a year from $22,000, he told a newspaper interviewer that members of Congress would never get rich in office. "Whatever you make, you're going to spend," he said then.

But as he climbed the seniority ladder to become Banking Committee chairman in 1981, his resulting power over the nation's banking, insurance, brokerage and construction industries expanded, and so did his wealth. An estimate of his net worth at the end of last year is between $2 million and $2.6 million, not counting a home in Woonsocket and a condominium residence in Washington, D.C.

Most recently, he has plunged into Florida real-estate investments with the help of Mr. Greene. Starting in December 1980, Mr. St Germain, Mr. Greene and others bought unimproved land around Alachua, Fla., near Gainesville, with the idea of subdividing it for sale as home sites. Neither man's name appears on deed or mortgage records, however, because the purchase was made through a trust, as permitted by Florida law. In his annual financial disclosures, Mr. St Germain values his investment in the Alachua deal at between $15,001 and $50,000. Mr. Greene confirms that he is a co-investor with the congressman.

About 1983 or before—Mr. St Germain has omitted the purchase date from his financial disclosures—the congressman acquired an interest, which he values at between $5,001 and $15,000, in a Tampa, Fla., parking lot that is also owned through a trust. Mr. Greene says he, some of his law partners and Mr. St Germain are co-investors.

In 1982, Messrs. Greene and St Germain joined with others to buy, through another anonymous trust, 160 acres of farmland in the path of development about five miles north of Tampa International Airport. Land records show the trustee paid about $1.7 million. The congressman's disclosures say he paid between $15,001 and $50,000 for his interest, and says it already produced income of between $5,001 and $15,000. Mr. Greene says he expects the land transactions to be profitable. "This is a booming part of the world," he says.

The fortunes of Mr. Greene's savings association depend in large part on legislation that passes through Mr. St Germain's committee. Furthermore, the congressman's chief of staff at the committee, Paul Nelson, has repeatedly contacted federal r' 'ators concerning Florida Federal's a :ations.

In 1983, when Florida Federal was applying to convert itself from a depositor-owned mutual association to a stock corporation, Mr. Nelson called top-board officials several times asking about the conversion plan. Through a press spokesman, Mr. Nelson denies any intent to bring pressure on the agency, saying "those were simply calls about the status, and no more than that."

Some board officials saw these calls as a none-too-subtle prodding, however. "When the chairman of the House Banking Committee makes the inquiry and is interested, you know he's not interested in having the thing turned down," says a former senior attorney at the agency.

That wasn't the first such contact. A bank-board official, now retired, recalls that he became "absolutely livid" when a St Germain aide called him to complain that Mr. Greene's son, Raleigh Greene III, who was then Florida Federal's outside counsel, had been treated rudely by the bank-board staff. Actually, the official says, "We treated him with complete courtesy, but we didn't give him what he wanted."

More recently, according to an attorney still employed at the agency, Mr. St Germain was "creating heat" on the agency's s ast summer to complete a review of an application by Florida Federal to acquire First Mutual Savings & Loan Association of Pensacola, Fla. The bank board was insisting on several conditions, and the S&L eventually dropped the merger plan.

The Banking Committee chairman's relationship with Mr. Greene was well-known around the bank board, a former board member says. "I knew that Raleigh and Freddy were good friends," he says. "If I wanted to lobby Freddy, I would talk to Raleigh."

But this same former board member expresses astonishment when told that the two men were business partners and that the congressman had bought stock in Florida Federal shortly after the board cleared its sale. Mr. St Germain bought between $15,001 and $50,000 of the stock in mid-1983, but he omitted disclosure of the stock purchase when he filed his next annual financial return in May 1984. Last year, after being questioned by this newspaper about omissions on his disclosure form, the chairman filed an amended report that showed for the first time that he held common stock in the S&L.

(Federal law makes it a civil violation, punishable by a fine of up to $5,000, for a congressman to "knowingly and willfully" fail to report required information. In serious cases, it can be a felony punishable by u five years in jail and a $10,000 fine for a congressman to make "false or fraudulent statements" on his disclosure forms.)

Mr. Greene says he didn't discuss the stock purchase with the congressman or ask him to intercede with regulators. Mr. St Germain [illegible]

Soon after this newspaper began asking the congressman's press spokesman about the Florida Federal connection, Mr. St Germain sold the stock. He disclosed the sale in an unusual footnote to his latest disclosure report. "The acquisition was intended to be temporary," he said. "My entire interest in the (savings) association was sold on May 22, 1985." That was nearly two years after he bought the stock, and he probably lost money if he bought the shares at the initial offering price of $20 a share. It closed at $18.75 the day he says he sold it.

By the time he became Mr. Greene's business associate, Rep. St Germain was already comfortably fixed, thanks largely to an investment made in 1972, after he became chairman of the Subcommittee on Bank Supervision. Using money borrowed from Rhode Island lending institutions, including federally regulated banks, he quietly purchased five restaurant buildings from International Industries Inc. of Beverly Hills, Calif., franchiser of the International House of Pancakes chain.

His ownership of the restaurants for years was hidden from the public, and he disclosed the bare outlines of it in 1978 only when required by the new Ethics in Government Act. That disclosure didn't tell the whole story, but Common Cause, the self-styled citizens' group, said then that his large bank loans posed a potential conflict of interest. And his Republican congressional opponent, John J. Slocum, charged: "Here's a man who's been in Congress for the past 18 years, living off a congressional salary, maintaining two homes, traveling back and forth between his offices, and suddenly, lo and behold, at year's end 1977 he's got all the assets he has."

Rhode Island voters returned Mr. St Germain to office handily, but what they didn't know is that he got the loans without putting up much of a down payment. The new ethics law didn't require such information, and the congressman didn't volunteer it.

For example, deed and mortgage records show that the Rhode Island Hospital Trust, a national bank based in Providence, lent him $2,500 *more* than the $239,500 purchase price of a restaurant he bought in the Bronx borough of New York City. Similarly, records show that Industrial National Bank (now Fleet National Bank) of Providence, lent him a net total of $1,000 *more* than the combined purchase prices of two restaurants he bought within four days of each other, one in Providence and the other in nearby Cranston, R.I.

Not long after, according to newspaper accounts at the time, Old Stone Savings Bank, which held a mortgage loan of $236,550 on the congressman's restaurant in Richardson, Texas, printed Mr. St Germain's picture in the pre-election issue of its shareholders' newsletter in 1978 with a story praising him for legislation. The headline: "Old Stone wins congressional support in opposing reserve bill—would have reduced Old Stone earnings."

Mr. St Germain says he didn't do any special favors for his lenders. He says his

no-money-down financing was justified because the mortgages were secured both by the property and by leases executed by the tenants, giving the lenders assurances of adequate cash flow to cover the payments.

But lenders seem to have assumed the major risk. They lent the congressman a total of $1.3 million at a time when his congressional salary was $42,500. The mortgages didn't make Mr. St Germain personally liable for payments had any of the restaurant operators failed.

Though the congressman's risk was small, his profits have been substantial. Total gross rents amounted to $165,000 in 1978, the only time Mr. St Germain volunteered the exact amount. They have almost certainly escalated since because they are based on a percentage of the tenants' sales. Meanwhile, inflation sent the property values soaring. Last Dec. 31, the congressman sold his Providence, R.I., restaurant for $470,000, a nearly 59% gain over the purchase price. Official tax assessments of the remaining four restaurants indicate their values have risen at roughly the same rate. Land records indicate that Mr. St Germain probably cleared about $400,000 on the sale of the Providence restaurant.

The lending institutions that made all this possible won't comment on the transactions. "We don't discuss or give out any information about private individuals," says a spokesman for Fleet National Bank, which made two of the mortgage loans.

Mr. St Germain insists the loans were made "on market terms" and adds, "All the terms have been met. The loans were clearly good business for the financial institutions."

Mr. St Germain was introduced to real estate investing as early as 1971 by his longtime friend, political fund-raiser and fellow Woonsocket native Roland Ferland. While the congressman used his growing political leverage on the banking committee and with federal agencies to help obtain federally subsidized housing projects for Rhode Island, Mr. Ferland became one of the state's biggest developers and operators of those projects. In the early 1970s, Mr. St Germain asked to be allowed to invest in some of Mr. Ferland's unsubsidized luxury-apartment developments. "I said, 'If something comes along, I hope you'll consider me,' " the congressman recalls. Partnership records show he eventually put up an initial $12,500 to buy a 15% interest in two of Mr. Ferland's developments, and a 20% interest in a third. The records show he was the only investor outside the Ferland family.

The Ferland transactions paid handsome returns. Mr. St Germain, in his latest financial disclosures, reports selling a part interest in one Ferland partnership for between $100,000 and $250,000 in 1980 and reports receiving between $30,002 and $100,000 as a "cash distribution" from another during 1983 and 1984. His recent disclosures do not mention the third partnership, although land records show it was selling units as condominiums during 1983.

Mr. Ferland, who was treasurer of Rep. St Germain's first congressional campaign, is a founder and behind-the-scenes power of the political-action committee of the National Association of Home Builders. The PAC donated to Rep. St Germain's lightly contested 1984 reelection campaign, helping to swell his current campaign war chest to $602,650, one of the biggest of any House member. The congressman recently announced he will seek reelection again next year.

Mr. St Germain says he sees no ethical problem with his investments in the Ferland developments because the developments he owns don't receive direct federal subsidies. "I've always paid my share," he says. "No special considerations."

Indeed, the congressman maintains that he takes extra care to avoid being influenced by moneyed interests. He says he no longer accepts speaking fees for appearing at financial-industry gatherings (though the hosts still pay his expenses). "You can be very independent when you don't take honorariums," he says. "I think that we (in Congress) should be able to survive on what we get."

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Exhibit B

IRS: Tax shelters used by St Germain 'abusive'

The Wall Street Journal

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WASHINGTON — While other Democrats preached tax reform, Rep. Fernand St Germain was investing in some legally dubious tax shelters.

The House Banking Committee chairman cut his federal income taxes by putting money into shelters offering write-offs of more than $400,000 for a cash investment of $120,000 or less. The legality of the shelters — which were set up ostensibly to mine coal in Kentucky — is currently being challenged by the Internal Revenue Service.

Mr. St Germain won't disclose his returns, so it isn't known what taxes he actually paid, if any. But from Dec. 29, 1978, to March 31, 1982, he poured tens of thousands of dollars into a series of limited partnerships that, according to confidential private placement memorandums that the promoter circulated to potential investors, promised quick tax deductions of between $3.01 and $3.60 for every $1 paid in.

These tax shelters — Darnell Associates, Lighthouse Hill Associates, ARG-80 Associates and Trinity Associates — were put together by a securities firm in New York. Partnership records on file in various county courthouses in New York state show that Rep. St Germain put up no more than $120,000 cash, and perhaps as little as $105,000 plus a $15,000, non-interest-bearing IOU. For this cash, or cash and paper, the promoter's private-placement memorandums promised write-offs totaling $405,344 during the first two years of each partnership.

If the congressman was in the 50 percent tax bracket in each of the five years in question, he would have reduced his federal income taxes by a total of $202,672. That would have left him $82,672 ahead on the deal before the first lump of coal was sold.

As it happened, the partnerships were far more successful at mining the U.S. Treasury than they were in mining coal. The promotor, Swanton Corp. of New York City, earlier this year filed for protection from creditors under Chapter 11 of the bankruptcy law. Earlier, Swanton filed an extensive disclosure statement at the Securities and Exchange Commission in Washington showing that its coal-mining ventures had been miserable failures. In all, 48 partnerships promoted by Swanton from 1977 and 1984 mined only 1% of the coal they had originally projected and repaid the limited partnership only about two cents of each dollar they put in.

The four tax shelters in which the congressman put his money didn't fare any better than the others. Swanton's SEC filings, coupled with its confidential placement memorandums, show that the four partnerships in which he was included mined only 1.6% of the cost originally projected. One was discontinued and three others were "delayed" by "adverse market conditions," according to Swanton's disclosure statement. The limited partners were paid back an average of only 0.6 cent for every dollar they put in.

The IRS is currently contending that the partnerships were just a means to milk the tax system, not bona fide business ventures. Swanton disclosed in a public filing that the IRS, after a year-long investigation, told the company on April 15 that it believes Swanton's coal partnerships violated Section 6700 of the tax code. That section forbids promotion of "abusive" tax shelters, defined as partnerships that obtain tax benefits by means of fraud or gross overstatement of the value of property or services.

Swanton denies the allegation. "It is Swanton's position that it has not violated Section 6700 in any manner," the company says in an SEC filing. But Rep. St Germain could possibly face a demand from the IRS for payment of back taxes and interest. Swanton says the limited partnerships in its coal programs are likely to be audited because of the IRS's contention that they were abusive.

Mr. St Germain won't discuss these partnerships except to say in a letter that they "were for a twofold purpose. They provide what could be a tax shelter, and they were purchased during the period when experts felt that coal certainly was a good investment for a return in the future."

Yet the partnerships warned, in their confidential placement memorandum, that the promoter had mined only "minimal" amounts of coal in the past and was offering tax write-offs based on legal positions that the courts hadn't tested and with which the IRS "may not agree."

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P.J. Editorial 9/13/85

Exhibit C

Mr. St Germain can help clear the air

9/13/85

Rep. Fernand J. St Germain's substantial accumulation of wealth during 13 terms in Congress is in the news again. A tantalizing political topic locally for years, the matter reached a national forum this week with a *Wall Street Journal* article (reprinted yesterday in these newspapers) on the congressman's growing affluence in tandem with his ascendancy in the U.S. House. Mr. St Germain, chairman of the powerful House Banking Committee, reacted by rejecting any link between that position and his personal fortune — and by complaining the latter was far overestimated. On this final point, at least, he can easily end all speculation.

Mr. St Germain has announced for reelection in 1986. All he needs to do is what a number of other major Rhode Island political candidates have done in past years: publicize his income-tax returns and net-worth statements. Although such information is properly confidential for average citizens, its disclosure by public office-seekers is hardly unwarranted. This is particularly true in the case of an official whose private income has been the subject of repeated question.

Even without having aroused this kind of curiosity that has marked Mr. St Germain's personal finances, various candidates of both political parties have voluntarily given the public a complete financial accounting of themselves. Some who come quickly to mind include Richard J. Israel when running for attorney general, John Hawkins for U.S. Senate, J. Joseph Garrahy for governor and Vincent A. Cianci Jr. for mayor of Providence, as well as the incumbent mayor, Joseph R. Paolino Jr. If they found this course suitable, why not Mr. St Germain?

So far, the First District congressman has restricted his disclosures to those required by the federal Ethics in Government Act. This post-Watergate law demands only that congressmen report their finances within broad categories; exact figures remain shrouded. If such imprecision has contributed to what Mr. St Germain claims are exaggerated estimates of his holdings (pegged at between $2 million and $2.6 million by the *Wall Street Journal*), then the congressman ought to furnish his income-tax return and net-worth statement for a more accurate reading. Other candidates have adopted this as a good practice. It would seem specially appropriate for someone in Mr. St Germain's situation.

Editorial! Washington Post Date? 9/15/85

Exhibit D

Washington ?

To the Ethics Committee

IN THE PAST two weeks, charges of varying seriousness have been made against two senior members of the House, Reps. Fernand St Germain (D-R.I.) and Dan Daniel (D-Va.). These both need to be resolved by the House ethics committee, though not necessarily in the same way.

Mr. Daniel has already pointed the way to a resolution in his case. He has admitted that he repeatedly flew back to his Southside district in planes owned by Beech Aircraft Corp., but did not report them on his disclosure form. House rules require disclosure of gifts, including transportation, worth more than $100, from companies with an interest in legislation. Mr. Daniel says he did not report these trips because the commercial airfare was $96 per trip. He has now agreed to reimburse the money and to amend his disclosure form. The ethics committee may want to consider the case, if only to clarify the law. But no one in the House seems to doubt Mr. Daniel's integrity, or to believe that he did anything worse than make an honest mistake.

The charges against Mr. St Germain, made in The Wall Street Journal last week by reporters Brooks Jackson and Tim Carrington, are on their face more serious. The Journal reported, first, that Mr. St Germain bought five International House of Pancakes restaurants with $1.3 million in loans from Rhode Island banks, on terms that required him to put up little or no cash. Second, the article reported Mr. St Germain profited from real estate investments arranged by a Rhode Island developer who profited from federally subsidized housing programs Mr. St Germain helped obtain for the state. Third, it said Mr. St Germain has benefited from land deals in Florida arranged by a developer who chairs a savings institution regulated by the Banking Committee, and that a top St Germain staffer made calls to federal regulators about applications by the developer's firms.

These charges raise, though they of course do not settle, the question of whether the chairman of the Banking Committee may have used his influence over legislation to enrich himself. It is undisputed that Mr. St Germain entered Congress in 1960 with minimal financial assets and now has a net worth over $2 million. His committee has jurisdiction over heavily regulated businesses, and any member should avoid more assiduously than Mr. St Germain seems to have done even the appearance of using his influence to enrich himself.

Why hasn't the ethics committee taken public action to look into these matters? The quick answer is, because no one has asked. No one, after all, likes to take on the chairman of an important committee. It is possible that the committee is conducting an investigation already—it won't comment on that. If it is not, it should. This is one case where House members' natural reluctance to investigate one of their colleagues should be outweighed by their concern for upholding proper ethical standards and for the reputation of the House itself.

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Exhibit E

And Mr. St Germain?

THE HOUSE ethics committee voted Thursday to begin a preliminary inquiry into the case of Rep. Dan Daniel (D-Va.). Well and good. Mr. Daniel accepted and did not disclose 23 free airplane trips back and forth to his district from Beech Aircraft Corp., although House rules forbid accepting a total of $100 or more a year in gifts from corporations with legislation before Congress and require disclosure of any gifts worth more than $250. During the same period, Mr. Daniel urged Congress to buy Beech's C12 for the Pentagon. Mr. Daniel has apologized on the floor of the House, has sent the company a check to pay for the rides, and has amended his disclosure forms. Still, the ethics committee should investigate and report, to clarify the rule and to help House members decide whether any further discipline is warranted.

We hope the committee's failure to announce at the same time any formal action in the case of Rep. Fernand St Germain (D-R.I.) does not represent anything more than a bit of delay. For facts alleged by Brooks Jackson and Tim Carrington in The Wall Street Journal raise a more serious question than anyone has alleged in Mr. Daniel's case. The question is whether Mr. St Germain, chairman of the House Banking, Finance and Urban Affairs Committee, has used his high position to enrich himself improperly.

These questions go to the heart of the integrity of the House and of the Democratic majority that elected Mr. St Germain to his chairmanship. The Banking Committee has jurisdiction over institutions that are necessarily closely regulated by government. Confidence in banks and savings institutions is essential to the operation of the economy, and in recent years that confidence has been shaken by the depositor runs and allegations of abuse of trust by insiders. The substantive responsibilities of a person in Mr. St Germain's position are as great as those of any member of Congress. If he is innocent of the charges, he deserves to be publicly cleared of them; confidence in his actions is at stake, as is fundamental fairness to the man. If it is established that he has undermined his ability to fulfill those responsibilities by attempting to enrich himself improperly, it would be a grave dereliction of duty for Congress not to take stern disciplinary action.

It is the ethics committee's responsibility to investigate the charges. Members of Congress are understandably reluctant to accuse their colleagues of misconduct. But surely they understand that misconduct by a member in a position of high trust, with pivotal responsibilities in a most sensitive regulatory area, must be either cleared or rebuked if the reputation of Congress generally, and of the majority party in the House in particular, are not to suffer harm.

WASHINGTON POST 9/22/85

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CommonCause

Exhibit F

For Release: IMMEDIATE
Friday, September 13, 1985

For Information: Virginia Sassaman

COMMON CAUSE CALLS FOR HOUSE ETHICS COMMITTEE

INVESTIGATIONS OF REPRESENTATIVES DANIEL AND ST GERMAIN

Common Cause today called on the House Ethics Committee to investigate recent allegations about Representatives Dan Daniel (D-VA) and Fernand St Germain (D-RI) to determine if House rules have been violated.

In separate letters to committee members, Common Cause raised the two cases, noting the following:

-- on September 10, 1985 the Richmond News Leader reported that Daniel, a senior member of the House Armed Services Committee, travelled "on an aircraft of a defense contractor" and "has not reported the travel on financial disclosure forms in recent years." House rules prohibit the acceptance of gifts of $100 or more from those having a direct interest in legislation before the Congress and require disclosure of gifts of transportation from others.

When asked if he knew whether he had complied with the gift limitation, Daniel told the Richmond News Leader, "I really don't, and the truth of the matter is, I don't care."

-- on September 11, 1985 the Wall Street Journal reported that Representative St Germain "has received lots of investment help from people and institutions that have benefited from his official actions" and listed a number of allegations concerning St Germain's private investments and his position as Chairman of the House Banking, Finance and Urban Affairs Committee.

The Code of Ethics for Government Service instructs Members never to accept "benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties."

Common Cause called for the Committee to investigate in both cases whether House rules had been violated and to issue a public report of their findings.

Copies of the two letters and the respective newspaper articles which raised the allegations are attached.

\# \# \#

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Exhibit G

common cause
2030 M STREET, N.W., WASHINGTON, D. C. 20036 (202) 833-1200

Archibald Cox
Chairman

Fred Wertheimer
President

John W. Gardner
Founding Chairman

September 13, 1985

The Honorable Julian C. Dixon
Committee on Standards of Official Conduct
HT-2 Capitol
Washington, D.C. 20515

Dear Chairman Dixon:

Allegations concerning Representative St Germain's private investments and his position as Chairman of the House Banking, Finance and Urban Affairs Committee appeared in the Wall Street Journal on September 11, 1985. This press report indicated that Rep. St Germain "has had lots of investment help from people and institutions that have benefited from his official actions."

The Code of Ethics for Government Service (72 Stat. Part 2, B 12, para. 5) instructs Members never to "discriminate unfairly by the dispensing of special favors or privileges to anyone," nor to accept "benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties."

The House Ethics Manual states that this provision would look to the "relationship between the receipt of benefits from a private source and the official duties or acts of a Member . . . as to any appearances of possible improprieties, undue influences, or breaches of the public trust in violation of this provision which, as noted by the House Committee on Standards of Official Conduct, works to 'prohibit conflicts of interest and the use of official position for any personal benefit.'"

Common Cause believes it is essential for the Committee on Standards of Official Conduct to initiate an investigation concerning the allegations made about Rep. St Germain to determine if House rules have been violated and to report publicly on its findings.

Sincerely,

Fred Wertheimer
President

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Exhibit H

Freddy and his friends

Rep. Fernand J. "Freddy" St Germain, chairman of the House Banking Committee, is not the first member of Congress to enrich himself through conflicts of interest. It would be vain to hope that he would be the last. But if the House wants to be something more than a national laughing stock, it had better get about punishing him in ways that might deter others for at least a little while.

St Germain's conduct, as exposed this week by the *Wall Street Journal*, calls at the minimum for the House to reprimand or censure him and dump him from his chairmanship in the event that his traditionally indulgent Rhode Island constituents insist on re-electing him next year.

It would also seem to warrant a federal criminal investigation into his failure to report his ownership of substantial stock in Florida Federal Savings and Loan when he filed his financial disclosure form for 1984. When he finally disclosed it this year — after he knew the *Journal's* reporters were on his case — he offered the ingenious excuse that "the acquisition was intended to be temporary." What stock speculations aren't?

ST GERMAIN'S deep involvement with Florida Federal and with its chief executive, Raleigh Greene, is all the more questionable because of St Germain's extensive legislative efforts in behalf of the thrift industry. When St Germain appeared here for Florida Federal's 50th anniversary celebration and office tower groundbreaking in January 1983, he boasted that his recently enacted deregulation bill would give savings and loans the power to compete against banks and brokerage firms in a full range of financial services. Was this because he truly believed in the bill? Or because his good buddy, Greene, had been cutting him into three promising Florida land deals and had helped him finance a condominium in Bayfront Tower?

The *Journal* also disclosed that certain Rhode Island banks lent him nearly the full purchase price and assumed most of the risk when St Germain bought five pancake restaurants with $1.3-million in mortgages. Were the banks so generous because they liked him? Or because they feared his wrath?

St Germain's bad judgment is proportionate to his power as a committee chairman, which is nearly absolute, and which he has used with definite partiality toward the thrifts. Despite criticism, he kept the chairmanship of the Financial Institutions Subcommittee after attaining the full committee chairmanship in 1981. It hardly needs to be said that it was wrong for St Germain's staff director to be pressuring federal banking regulators in support of Florida Federal's stock conversion and other matters involving the St. Petersburg institution. St Germain's subsequent purchase of Florida Federal stock looks especially questionable for that.

FOR HIS part, Greene told the *Journal* that he never asked St Germain to intercede with federal regulators. For *his* part, St Germain isn't saying much except to accuse the *Journal* of viewing his affairs "in the worst possible light." The best possible light wouldn't be any too good.

Greene did admit that he had invited St Germain into the Florida real estate deals. "It's like anything else," he told the *Journal*. "You sit down with your buddies and say 'Do you want in?' And you either say yea or nay." Give Greene credit for a candid commentary on certain forms of business practice, but not for his judgment in exposing himself and his institution to potential criticism. There's something wrong with the system when powerful bankers are "buddies" with the chairman of a congressional banking committee and cut him in on land deals not offered to the general public.

It's nice to know, however, that even St Germain has his limits. Notwithstanding his lucrative private banking deals, he doesn't accept honorariums for speaking at banking industry conventions. "You can be very independent when you don't take honorariums," he said. "I think that we (in Congress) should be able to survive on what we get."

They should and they do. The question is where they get it.

ART ISA 9-13-85

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The St. Petersburg Times

9/13/85

Exhibit I

St Germain Defends Finances

PROVIDENCE, R.I., Sept. 11 (AP) — Representative Fernand J. St Germain criticized The Wall Street Journal today for reporting that he has received investment aid from people and institutions that have benefited from his actions as chairman of the House Banking Committee.

"I have made investments with the objective of providing for my family," the Rhode Island Democrat said in a statement. "For reasons best known to its reporters and editors, The Wall Street Journal has gone to great lengths to cast these investments in the worst possible light.

"I have scrupulously avoided any official actions on my part which would have created conflicts of interest in connection with these investments."

In a front-page article in today's issue, The Journal said it had analyzed Mr. St Germain's finances from his financial disclosure forms, interviews and records at the Securities and Exchange Commission and more than a dozen state and county offices.

Purchases of Real Estate

The newspaper reported that Mr. St Germain, who represents a mostly blue-collar district in eastern Rhode Island, had bought a $200,000 condominum at Newport, R.I., also in his district, and two Florida properties for nearly $240,000.

It said Mr. St Germain owns restaurants worth $1.9 million plus stocks, real estate and mutual funds valued between $325,000 and $940,000.

The Journal also said the Internal Revenue Service is investigating what that agency terms "abusive tax shelters" in which the Congressman has invested $120,000 for promised tax deductions of $405,000.

Mr. St Germain, 57 years old, said the article contained "unfair and unsupported innuendos," but he said he would not "engage in a drawn-out point-by-point argument."

The newspaper said the 13-term Congressman had bought $15,000 worth of stock in Florida Federal Savings and Loan after a top aide repeatedly phoned Federal regulators to check on the progress of the institution's application to issue the stock.

Mr. St Germain's chief of staff at the Banking Committee, Paul Nelson, said the calls had been made only to learn the status of the stock proposal.

Role of Thrift Executive

The Journal also said Raleigh Greene, president of Florida Federal, had arranged for Mr. St Germain to take part in several lucrative real estate deals.

Mr. Greene, who said he had never asked Mr. St Germain for help in Washington, confirmed that he had invited the Congressman to participate in three real estate investments that were not offered to the public.

The newspaper also said Mr. St Germain had obtained loans from two Rhode Island banks for amounts in excess of the purchase price of restaurants for which he secured no-money-down financing.

Mr. St Germain said he did no special favors for the banks, which lent him $1.3 million when his Congressional salary was $42,500 a year. "The loans were clearly good business for the financial institutions," he said.

The Journal also said court records in New York show that Mr. St Germain invested up to $120,000 in tax shelters and was promised write-offs totaling $405,344 during the first two years of the partnerships. The I.R.S. contends that the tax shelters were just a means to milk the tax system, not bona fide business ventures, the newspaper said.

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New York Times, Sept. 12, 1985 (43)

P. J 9/19/85

Exhibit J

9/19/85

Post urges probe of St Germain

By JOHN MULLIGAN
Journal-Bulletin Washington Bureau

WASHINGTON — The Washington *Post* yesterday called for an investigation into a newspaper report that Rep. Fernand J. St Germain of Rhode Island has become a millionaire with help from people and institutions that have gained from his actions as House Banking Committee chairman.

Any House member "should avoid more assiduously than Mr. St Germain seems to have done even the appearance of using his influence to enrich himself," the newspaper said in an editorial that called for a House ethics committee investigation.

The editorial specifically cited three elements in a *Wall Street Journal* report:

"... First, that Mr. St Germain bought five International House of Pancakes restaurants with $1.3 million in loans from Rhode Island banks, on terms that required him to put up little or no cash.

"Second (that St Germain) profited from real estate investments arranged by a Rhode Island developer who profited from federally subsidized housing programs Mr. St Germain helped obtain for the state.

"Third (that St Germain) has benefited from land deals in Florida arranged by a developer who chairs a savings institution regulated by the Banking Committee, and that a top St Germain staffer made calls to federal regulators about applications by the developer's firms."

St Germain aide Richard L. Maurano said that if the ethics panel decides "to look into something, they'll find that he's done nothing wrong. It's their call."

Maurano noted that St Germain will appear on a television interview show in Providence this weekend to discuss the matter.

The office of Rep. Julian C. Dixon, D-Cal, the ethics panel's chairman, did not answer a request for comment.

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Exhibit K

RHODE ISLAND CITIZENS FOR ACCOUNTABILITY IN GOVERNMENT

Dear Taxpayer:

You may have heard that our Congressman, Fernand St Germain, has been accused of some very serious charges.

According to the *Wall Street Journal*, *The Providence Journal Bulletin*, and other respected newspapers, Congressman St Germain has amassed a multimillion dollar personal fortune by using his public position to help wealthy investors.

It's time to clear the air.

That's why Rhode Island Citizens for Accountability in Government are asking Congressman St Germain to disclose in detail his financial records and make available to the public his tax returns.

Unfortunately, St Germain has refused. And that's bad because the people of Rhode Island have a right to know if our Congressman is telling the truth.

We also have a right to know if St Germain is trying to hide something.

In past years, public officials of both political parties have given the public a complete financial accounting of themselves.

Some who come quickly to mind are Richard Israel when running for Attorney General, John Hawkins for U.S. Senate, Joseph Garrahy for Governor, Vincent Cianci, Jr. for Mayor of Providence, and incumbent Mayor, Joseph Paolino, Jr.

If they found this course suitable, why not Congressman St Germain?

Just at a time Rhode Island citizens are demanding our leaders be honest and above reproach, we cannot afford to have this dark cloud hanging over our heads.

There's only one solution: Congressman St Germain must come clean by fully disclosing his taxes and finances. To do otherwise would bring an end to our efforts to rid our government of corruption and those who seek personal gain.

That's why we—Rhode Island Citizens for Accountability in Government—urge you and other members of your household to sign the attached petition and mail it to us immediately.

The petition asks the U.S. House of Representatives' Ethics Committee to officially investigate these serious charges and further demands that St Germain publicly disclose his taxes and finances.

The people of Rhode Island deserve to know the truth. The time for answers is now.

Sincerely,

Sandra Winslow

Sandra Winslow, Chairperson

P.S. Please sign the petition and mail immediately

To: Honorable Julian Dixon, Chairman

I (we), the undersigned, urge the Ethics Committee of the House of Representatives to conduct an official investigation into the accusations against Congressman St Germain and further ask that Mr. St Germain's tax and finance records be fully disclosed. Thank you.

1. _____ (signature) Print name _____

2. _____ (signature) Print name _____

3. _____ (signature) Print name _____

Address _____

City _____

State _____ Zip _____

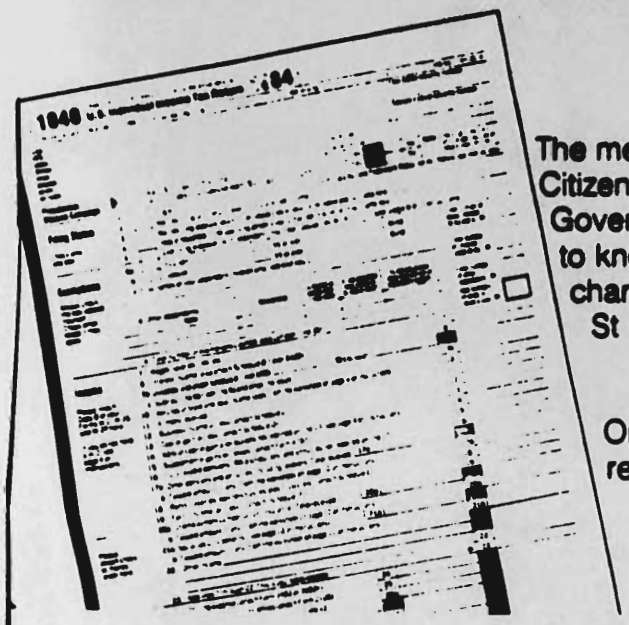
Telephone (____) _____

It's time to clear the air...!

Rhode Island Citizens For
Accountability In Government
P.O. Box 28672
Providence, Rhode Island 02908

Bulk Rate
U.S. Postage
PAID
Providence, R.I.
Permit 02907

Tell us the *truth*, Congressman St Germain.



The members of Rhode Island Citizens for Accountability in Government—a non-partisan group—want to know the truth about the financial charges made against Congressman St Germain.

Only you, Congressman, can set the record straight.

No Postage Necessary If Mailed In The United States

BUSINESS REPLY MAIL
First Class Permit No. 1408 Providence, R.I. 02908

Postage will be paid by Addressee

RHODE ISLAND CITIZENS FOR ACCOUNTABILITY IN GOVERNMENT
P.O. BOX 28672
PROVIDENCE, RHODE ISLAND 02908-9990

FEC
CCC#9557
'86 JAN 27 A10:20

Republican National Committee

E. Mark Braden
Chief Counsel

Michael A. Hess
Randall Davis
Deputy Chief Counsels

January 21, 1986

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

'86 JAN 27 P2:33

RE: MUR 2116

ATTN: Kenneth A. Gross,
Associate General Counsel

Dear Mr. Steele:

I am writing in response to your letter of January 9, 1986, addressed to Mr. William J. McManus, stating that the Federal Election Commission has received a complaint alleging that the Republican National Committee may have violated certain sections of the Federal Election Campaign Act of 1971 as amended (FECA).

Your letter enclosed a complaint from the Democratic Congressional Campaign Committee (DCCC). This complaint provided no factual allegations upon which it is possible to conclude that the Republican National Committee may have violated any provisions of the Federal Election Campaign Act. For this reason, the Commission should take no action against the RNC.

The only actions of the RNC alluded to in the complaint are newspaper reports of a poll conducted in Rhode Island.

The RNC did commission Decision Making Information (DMI) to conduct a poll in the First Congressional District of Rhode Island. The poll entailed approximately forty-eight (48) questions, and the Committee paid DMI $11,400.00 for their work. The survey was completed on August 5, 1985. The results of the survey were transmitted to the Chairman of the Rhode Island Republican Party, Mr. Holmes, on August 22, 1985. It is not clear from the complaint which specific provisions of the Federal Election Campaign Act the DCCC is asserting that this action violates. There is no allegation that

Attachment 4

Dwight D. Eisenhower Republican Center: 310 First Street Southeast, Washington, D.C. 20003, (202) 863-8638, Telex: 701144

the RNC has improperly reported this activity or any disbursements for it. Such disbursements would not be in excess of any contribution or expenditure limits. No provision of the Act would prohibit any disbursements for such activities by the RNC.

For these reasons, the complaint should be dismissed.

Very truly yours,

E. Mark Braden /RD

E. Mark Braden

EMB:jd

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EDWARDS & ANGELL

Counsellors at Law

Bennett Lindenfeld
John L. Clark
John V. Fiore
Edward F. Hinds
Robert Leigh Davis
Knight Dunlap
Beverly Glass Young
James M. Bradley
George Mahoney*
James E. Edwards
Alan S. Pilot
Lynne N. Agnew
Roger V. Pugh, Jr.*
Stephen A. Fleming, Jr.
Colleen C. Gannon
Charles G. Edwards
Alvin M. Glassman*
Carl Angelo*
Benjamin F. Hinsie III
Richard M. Bond
V. Dennis Johnson
John H. Hall
James J. Rodrigues
Paul F. Gorry
James P. Kelly
Dominic E. Sherman
Edward J. Brennan, Jr.
John H. Reid III
Jerry L. McIntyre
Richard M. C. Glass III
Timothy T. Moore
Jonathan E. Coty
Matthew F. McKenna
Alfred S. Lenkowski
Kimmard Hovland
Terrence M. Finn
David M. Glazer*
Andrew J. Clifton
Joseph V. Cavanagh, Jr.
Robert G. Flanders, Jr.
Richard A. Paver*
James R. McGrath
David K. DeWolf
William P. Robinson III
John B. Rosenquest III
Susan S. Egan*
Thomas E. Plotz, Jr.
Mary Louise Kennedy
Walter G. D. Read
Stephen O. Meredith
Patricia A. S. Zeik
Gail E. McCann
John D. Dineen, Jr.
Charles F. Rogers, Jr.
Michael H. Miller*
Barry G. Hitner
Philip B. Burr, Jr.
Christine M. Marz
Elizabeth H. Mennell*

Counsel
Alfred H. Joslin
Max Scherr*
Hugh MacMillan, Jr.*

Steven M. McInnis
Jeffrey C. Schreck
William R. Landry
David A. Gunner*
G. Scott Nobergall
James R. Kay*
Kurt J. von Beuzekom
John A. Houlihan
Christopher D. Graham
John G. Igoe
Walter C. Hunter
Aubrey F. Hammond, Jr.
Geoffrey Etheriogton III
Barbara Brown Schoenfeld
Ruth K. Heller
Nancy Fisher Chudacoff
John F. Reed
Judith Colenbock Savage
Glenn R. Every*
Joyce L. Elden
Joseph A. Amato
Michael Dillon
Karen G. DelPonte
Robert Kennan*
Alfred R. Pallani*
Kenneth L. Levine
Doreen Klein*
Mary P. Hoffner
Susan I. Needham*
Alan J. Bradford*
Jeffrey A. Hermanson
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Dean T. Pickard
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John J. Gormley
M. Meredith Hayes
Neil W. Plasack*
Leonard O. Slap*
Laura N. Wilkinson
Lori J. Hayden
Melissa T. Rose*

Of Counsel
Edward Winsor
Gerald W. Harrington

*Not a member of the Rhode Island Bar

2700 Hospital Trust Tower
Providence, Rhode Island 02903
401 274-9200
Telex 952001 "E A PVD"
Telecopier 401 276-6611

Q CC#119

March 28, 1986

Mr. Charles N. Steele
General Counsel
Federal Election Commission
999 East Street, N.W.
Washington, DC 20463

Attention: Kenneth A. Gross, Associate General Counsel

Re: MUR 2116

Dear Mr. Steele:

This will respond to your letter of January 9, 1986 to Mr. John A. Holmes, whom I represent as his attorney in this matter.

Your letter asked if Mr. Holmes would submit a response to you with respect to the Complaint filed with the Federal Election Commission by the Democratic Congressional Campaign Committee against Mr. Holmes and others for alleged violations of the Federal Election Campaign Act and related regulations.

At no time material to the allegations in the complaint has Mr. Holmes been a candidate for nomination for election to the House of Representatives for the First District of Rhode Island.

Contrary to the allegations, Mr. Holmes did not coordinate and cooperate with the activities of the National Republican Congressional Committee, the Republican National Committee, and the Rhode Island Citizens for Accountability in Government. The mailings, advertisements, and other conduct complained of were done without seeking or obtaining Mr. Holmes' consent and without his knowledge.

430 Park Avenue
New York, New York 10022
212 308-4411
Telecopier 212 308-4844

250 Royal Palm Way
P.O. Box 2621
Palm Beach, Florida 33480
305 833-7700
Telecopier 305 655-8719
Telex 3728004 EDWANGELL PBH

265 Franklin Street
Boston, Massachusetts 02110
617 439-4444
Telecopier 617 439-4170

Attachment 5

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Moreover, none of the challenged activities promoted the candidacy of Mr. Holmes. Thus, the unsupported claim that Mr. Holmes was somehow "involved" with the expenditures supporting these activities such that he was required to register as a candidate under the Federal Election Campaign Act should be rejected.

Very truly yours,

Robert G. Flanders, Jr.

Enclosure

P.S. Mr. Holmes did not receive your letter and the enclosed Complaint until March 15, 1986. I am also enclosing a Statement of Designation of Counsel.

8604059353 1

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2116

NAME OF COUNSEL: Robert G. Flanders, Jr., Esq.

ADDRESS: EDWARDS & ANGELL
2700 Hospital Trust Tower
Providence, Rhode Island 02903

TELEPHONE: (401) 274-9200

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

3-28-86
Date

Signature

RESPONDENT'S NAME: John A. Holmes

ADDRESS: 5 Surrey Road
Barrington, Rhode Island 02806

HOME PHONE:

BUSINESS PHONE: (401) 433-1900

R 6 0 4 0 5 9 3 5 3 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

E. Mark Braden, Esquire
Chief Counsel
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 2116
Republican National
Committee
William J. McManus, as
treasurer

8604059353

Dear Mr. Braden:

The Federal Election Commission notified the Republican National Committee and William J. McManus, as treasurer, on January 9, 1986, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to the Committee at that time. We acknowledge receipt of your client's explanation of this matter which was dated January 21, 1986.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on ,1986, determined that there is reason to believe that the Republican National Committee and William J. McManus, as treasurer, violated 2 U.S.C. §§ 441a(d), a provision of the Act. You may submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Please submit any such response within ten days of your receipt of this notification.

The Commission found no reason to believe that the Republican National Committee and William J. McManus, as Treasurer, violated 2 U.S.C. § 441d.

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause; however, in the absence of any information which demonstrates that no further action should be taken against the Committee and Mr. McManus, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2 of the enclosed procedures.

Attachment 6

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 have any questions, please contact Michele Brown, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Joan D. Aikens
Chairman

Enclosures
Procedures

8 6 0 4 0 5 9 3 5 3 4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Jan W. Baran, Esquire
General Counsel
Benjamin L. Ginsberg, Esquire
Legal Counsel
National Republican Congressional Committee
320 First Street, S.E.
Washington, D.C. 20003

RE: MUR 2116
National Republican
Congressional Committee
Jack McDonald, as treasurer

Dear Messrs. Baran and Ginsberg:

The Federal Election Commission notified the National Republican Congressional Committee and Jack McDonald, as treasurer, on January 9, 1986, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to the Committee at that time. We acknowledge receipt of your client's explanation of this matter which was dated February 17, 1986.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on 1986, determined that there is reason to believe that the National Republican Congressional Committee and Jack McDonald, as treasurer, violated 2 U.S.C. §§ 441a(d), a provision of the Act. You may submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Please submit any such response within ten days of your receipt of this notification.

The Commission found no reason to believe that the National Republican Congressional Committee and Jack McDonald, as treasurer, violated 2 U.S.C. § 441d.

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause; however, in the absence of any information which demonstrates that no further action should be taken against the Committee and

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 have any questions, please contact Michele Brown, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Joan D. Aikens
Chairman

Enclosures
Procedures

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert G. Flanders, Jr.
Edwards & Angell
2700 Hospital Trust Tower
Providence, Rhode Island 82903

RE: MUR 2116
John A. Holmes, Jr.

Dear Mr. Flanders:

On March 15, 1986, the Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on , 1986, determined that on the basis of the information in the complaint, and information provided by you on behalf of your client, there is no reason to believe that John A. Holmes violated 2 U.S.C. § 432(e)(1). Accordingly, the Commission closed its file in this matter as it pertains to your client. This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

8604059353 7

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: May 19, 1986

SUBJECT: MUR 2116 - General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS		DISTRIBUTION	
48 Hour Tally Vote	[xx]	Compliance	[xx]
Sensitive	[xx]		
Non-Sensitive	[ ]	Audit Matters	[ ]
24 Hour No Objection	[ ]	Litigation	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Closed MUR Letters	[ ]
Information	[ ]	Status Sheets	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Advisory Opinions	[ ]
Other	[ ]	Other (see distribution below)	[ ]

86040793538

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1986

The Honorable Tony Coelho
Chairman
Democratic Congressional Campaign
Committee
430 South Capitol Street
Washington, D.C. 20003

Dear Mr. Coelho:

This is in response to your letter of April 24, 1986, in which you request information pertaining to the complaint filed by the Democratic Congressional Campaign Committee with the Commission.

As you know, the Federal Election Campaign Act prohibits any person from making public the fact of any notification or investigation by the Commission unless the party being investigated has agreed in writing that the matter be made public. (See 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(a)). Because there has been no written agreement that the matter be made public, we are not in a position to release any information at this time. We will notify the DCCC as soon as the Commission determines what action should be taken.

While, we understand you are anxious for a quick resolution of this matter, we unfortunately cannot provide any further information at this time. We will advise you as soon as possible.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure

8604059539

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

The Honorable Tony Coelho
Chairman
Democratic Congressional Campaign
Committee
430 South Capitol Street
Washington, D.C. 20003

Dear Mr. Coelho:

This is in response to your letter of April 24, 1986, in which you request information pertaining to the complaint filed by the Democratic Congressional Campaign Committee with the Commission.

The Federal Election Campaign Act prohibits any person from making public the fact of any notification or investigation by the Commission unless the party being investigated has agreed in writing that the matter be made public. (See 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(a)). Because there has been no written agreement that the matter be made public, we are not in a position to release any information at this time.

As Mr. Robert F. Bauer was informed by letter of January 9, 1986 (copy attached), we will notify the DCCC as soon as the Commission determines what action should be taken. We cannot, of course, advise you concerning your contemplated action pursuant to 2 U.S.C. § 437g(a)(8).

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure

86040535540

RECEIVED
OFFICE OF
GENERAL COUNSEL
86 APR 28 P2:07
MUR 2
RECEIVED AT THE FEC
GCC#345
86 APR 28 A8:02

DEMOCRATIC
CONGRESSIONAL
CAMPAIGN COMMITTEE

Tony Coelho, CA
Chairman

April 24, 1986

Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Commissioners:

On December 20, 1986, the Democratic Congressional Campaign Committee ("DCCC"), through counsel, filed a complaint with the Commission, alleging numerous violations of the Federal Election Campaign Act by the National Republican Congressional Committee, Republican National Committee and Mr. John A. Holmes.

Our complaint described in detail violations which were committed by Respondents in an effort to undermine the reelection efforts of Congressman Fernand St Germain (and thereby promote the candidacy of his likely Republican opponent, Mr. Holmes).

Under the Act, Congress has provided for a period of 120 days, beginning the day a complaint is filed, within which the Commission must act. This period lapsed April 17. However, we have not, to my knowledge, received notice of the Commission's disposition of our complaint, nor has any public disclosure of the enforcement file reflecting appropriate resolution of the issues been made.

As you know, election years run on immutable timetables, and election year offenses go unpunished if they are addressed only when the election is over. In election law, "justice delayed" is a contradiction in terms.

I would ask that the Commission comply with statutory requirements and bring this matter to a close now in one of two ways: (1) a completed conciliation agreement, including a civil penalty proportionate to the offenses committed; or (2) an immediate move by the Commission to Federal court to seek judicial assistance if Respondents are refusing to negotiate in good faith toward a timely and appropriate settlement. One action or the other is necessary if the public interest is to be served.

430 SOUTH CAPITOL STREET • WASHINGTON, D.C. 20003 • (202) 863-1500

Paid for and authorized by the Democratic Congressional Campaign Committee

As you also know, the DCCC recently filed a separate complaint regarding similar efforts by the Republican Party in Michigan to evade expenditure limits and disclosure requirements.

In short, I am concerned about an emerging pattern of sham groups and other GOP vehicles that have been created in this election cycle to funnel resources -- without allocation or disclosure -- into districts with the sole intent of damaging the reelection prospects of Democratic incumbents. Given the experience in the closing days of the 1984 campaign, when millions worth of so-called "generic" ads began running against individual House Democrats in their respective districts, I am not interested in letting this drag on until the fall of 1986.

In the event the Commission is unprepared to act, then I will direct the DCCC as Complainant to take the action authorized by law under 2 U.S.C. 437g(8)(A). I hope and trust this will not be required.

Please let me know if you have any questions. I look forward to hearing from you.

Sincerely,

TONY COELHO
CHAIRMAN

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EDWARDS & ANGELL

Counsellors at Law

2700 Hospital Trust Tower
Providence, Rhode Island 02903
401 274-9200
Telex 952001 "E A PVD"
Telecopier 401 276-6611

RECEIVED FEC
GCC#119
86 APR 1 A9:18

Bancroft Littlefield
John L. Clark
John V. Kean
Edward F. Hindle
Robert Spink Davis
Knight Edwards
Beverly Glenn Long
James H. Barnett
George Michaels*
James K. Edwards
Alan S. Flink
Ernest N. Agresti
Roger V. Pugh, Jr.*
Stephen A. Fanning, Jr.
Calvert C. Groton
Charles G. Edwards
Alvin M. Glazerman*
Carl Angeloff*
Benjamin P. Harris III
Richard M. Borod
V. Duncan Johnson
John H. Blish
James J. Skeffington
Paul F. Greene
James P. Kelly
Deming E. Sherman
Edward J. Bertozzi, Jr.
John H. Reid III
Jerry L. McIntyre
Richard M. C. Glenn III
Timothy T. More
Jonathan E. Cole
Matthew F. Medeiros
Alfred S. Lombardi
Kinnaird Howland
Terrence M. Finn
David M. Olasov*
Andrew J. Chlebus
Joseph V. Cavanagh, Jr.
Robert G. Flanders, Jr.
Richard A. Perras*
James R. McGuirk
David K. Duffell
William P. Robinson III
John B. Rosenquest III
Susan S. Egan*
Thomas E. Pitts, Jr.
Mary Louise Kennedy
Walter G. D. Reed
Stephen O. Meredith
Patricia A. S. Zesk
Gail E. McCann
John D. Deacon, Jr.
Charles F. Rogers, Jr.
Michael H. Miller*
Barry G. Hittner
Philip B. Barr, Jr.
Christine M. Marx
Elizabeth H. Munnell*

Counsel
Alfred H. Joslin
Max Schorr*
Hugh MacMillan, Jr.*

Steven M. McInnis
Jeffrey C. Schreck
William R. Landry
David A. Gunter*
G. Scott Nebergall
James R. Kay*
Kurt J. von Boeselager
John A. Houlihan
Christopher D. Graham
John G. Igoe
Walter C. Hunter
Aubrey F. Hammond, Jr.
Geoffrey Etherington III
Barbara Braun Schoenfeld
Ruth K. Heller
Nancy Fisher Chudacoff
John F. Reed
Judith Colenback Savage
Glenn R. Every*
Joyce L. Elden
Joseph A. Anesta
Michael DiBiase
Karen G. DelPonte
Robert Karmen*
Alfred R. Paliani*
Kenneth L. Levine
Doreen Klein*
Mary P. Heffner
Susan I. Needham*
Alan J. Bouffard*
Jeffrey A. Hermanson
Brian T. Moynihan
Dana T. Pickard
Mark H. Mirkin*
John J. Garrahy
M. Meredith Hayes
Neil W. Platock*
Leonard Q. Slap*
Laura N. Wilkinson
Lori J. Hayden
Melissa T. Rosse*

Of Counsel
Edward Winsor
Gerald W. Harrington

*Not a member of the Rhode Island Bar

March 28, 1986

Mr. Charles N. Steele
General Counsel
Federal Election Commission
999 East Street, N.W.
Washington, DC 20463

86 APR 1 A11:02

Attention: Kenneth A. Gross, Associate General Counsel

Re: MUR 2116

Dear Mr. Steele:

This will respond to your letter of January 9, 1986 to Mr. John A. Holmes, whom I represent as his attorney in this matter.

Your letter asked if Mr. Holmes would submit a response to you with respect to the Complaint filed with the Federal Election Commission by the Democratic Congressional Campaign Committee against Mr. Holmes and others for alleged violations of the Federal Election Campaign Act and related regulations.

At no time material to the allegations in the complaint has Mr. Holmes been a candidate for nomination for election to the House of Representatives for the First District of Rhode Island.

Contrary to the allegations, Mr. Holmes did not coordinate and cooperate with the activities of the National Republican Congressional Committee, the Republican National Committee, and the Rhode Island Citizens for Accountability in Government. The mailings, advertisements, and other conduct complained of were done without seeking or obtaining Mr. Holmes' consent and without his knowledge.

430 Park Avenue
New York, New York 10022
212 308-4411
Telecopier 212 308-4844

250 Royal Palm Way
P.O. Box 2621
Palm Beach, Florida 33480
305 833-7700
Telecopier 305 655-8719
Telex 3728004 EDWANGELL PBH

265 Franklin Street
Boston, Massachusetts 02110
617 439-4444
Telecopier 617 439-4170

Moreover, none of the challenged activities promoted the candidacy of Mr. Holmes. Thus, the unsupported claim that Mr. Holmes was somehow "involved" with the expenditures supporting these activities such that he was required to register as a candidate under the Federal Election Campaign Act should be rejected.

Very truly yours,

Robert G. Flanders, Jr.

Enclosure

P.S. Mr. Holmes did not receive your letter and the enclosed Complaint until March 15, 1986. I am also enclosing a Statement of Designation of Counsel.

8604069354 4

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2116

NAME OF COUNSEL: Robert G. Flanders, Jr., Esq.

ADDRESS: EDWARDS & ANGELL
2700 Hospital Trust Tower
Providence, Rhode Island 02903

TELEPHONE: (401) 274-9200

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

3-28-86
Date

Signature

RESPONDENT'S NAME: John A. Holmes

ADDRESS: 5 Surrey Road
Barrington, Rhode Island 02806

HOME PHONE:

BUSINESS PHONE: (401) 433-1900

8604059354 3

RGF

VARDS & ANGELL

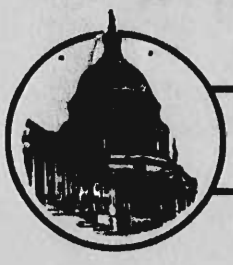
PROVIDENCE, RI 029
PM
28 MAR
1986

Mr. Charles N. Steele
General Counsel
Federal Election Commission
999 East Street, N.W.
Washington, DC 20463

Attention: Kenneth A. Gross, Esq.
Associate General Counsel

Hospital Trust Tower
idence, Rhode Island 02903

GCC#9764



National Republican Congressional Committee

320 FIRST STREET, S.E. • WASHINGTON, D.C. 20003 • 202-479-7000

GENERAL COUNSEL
Jan W. Baran

LEGAL COUNSEL
Benjamin L. Ginsberg

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
86 FEB 19 P2:03

February 19, 1986

86040059547

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

Dear Mr. Steele:

Re: MUR 2116

This letter and the attached exhibits are submitted by the National Republican Congressional Committee ("NRCC") pursuant to 2 U.S.C. 437g(a)(1) in response to a complaint filed by the Democratic Congressional Campaign Committee ("DCCC") denominated Matter Under Review ("MUR") 2116. For the reasons set forth herein, the Federal Election Commission ("Commission") should find no reason to believe that NRCC has violated the Federal Election Campaign Act, as amended ("Act").

Paid for by the National Republican Congressional Committee. Not produced at government expense

I. FACTS

A. The Article

On September 11, 1985, The Wall Street Journal published a front page article concerning Congressman Fernand St Germain entitled "Making a Fortune/As a Private Investor, House Banking Chief Has Grown Very Rich/Rep. St Germain Has Had Lots of Help From Those He Has Aided Officially." (See Attachment A).

The article, by reporters Brooks Jackson and Tim Carrington, chronicles in more than 20,000 words how the powerful chairman of the House Banking Committee has garnered a personal fortune during his 24-year career as the elected Representative of Rhode Island's First Congressional District. The article states:

> An examination of his [St Germain's] private investments shows that, in acquiring his fortune, the congressman has had lots of investment help from people and institutions that have benefited from his official actions.
>
> As House banking chairman, the 57-year-old Mr. St Germain is among Congress' most powerful lawmakers. He presides with unusually strong authority over a committee that routinely handles multibillion-dollar matters that shape the nation's fast-changing financial system. He also is a force to be reckoned with at federal banking agencies.

Wall Street Journal, Sept. 11, 1985, at 1, col. 1.

The Journal article reports that the founder and chairman of a Florida savings & loan institution included Congressman St Germain in several "potentially lucrative real estate investments" that were not offered to the public, while Congressman St Germain had his staff contact the federal Home Loan Bank Board on matters

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concerning the chairman's savings & loan; that Congressman St Germain bought five restaurants with money from Rhode Island lending institutions "that put up nearly 100% of the purchase price and assumed most of the risk"; and that Congressman St Germain is "still reaping profits from earlier, publicized real-estate investments" arranged by a Rhode Island developer "who himself profited from federally subsidized housing developments that the congressman helped obtain for the state." Id.

The Journal article also states:

> [A]s his power has grown, so has his wealth. (The Internal Revenue Service is investigating what it terms 'abusive' tax shelters into which the congressman put $120,000 of his money for $405,000 in promised tax deductions).

Id.; see Exhibit B.

B. The Public Debate

The reaction to the report concerning St Germain's record and actions as an elected public official was swift, both in Rhode Island and around the country. (See Exhibits C - J). Newspapers and members of the public alike commented on the record and actions of the chairman of the House Banking Committee.

1. The Media

On September 13, 1985, the Providence Journal Bulletin editorialized "on the congressman's growing affluence in tandem with his ascendancy in the U.S. House" and the public's need to be sure of its legitimacy. (See Exhibit C). The editorial, entitled "Mr. St Germain Can Help Clear the Air", said in part:

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> All he [St Germain] needs to do is what a number of other major Rhode Island political candidates have done in past years: publicize his income tax returns and net worth statements. Although such information is properly confidential for average citizens, its disclosure by public office-seekers is hardly unwarranted. This is particularly true in the case of an official whose private income has been the subject of repeated question.
>
> [Noting several Rhode Island public officials who made their returns public, the editorial asked:] If they found this course suitable, why not Mr. St Germain?
>
> [T]he congressman ought to furnish his income tax returns and net worth statement for a more accurate reading. Other candidates have adopted this as a good practice. It would seem especially appropriate for someone in Mr. St Germain's situation.

The Washington Post, in editorials on September 18, 1985 (see Exhibit D) and September 22, 1985 (see Exhibit E), called upon the House Committee on Standards of Official Conduct to investigate Congressman St Germain's actions:

> The question is whether Mr. St Germain, chairman of the House Banking, Finance and Urban Affairs Committee, has used his high position to enrich himself improperly.
>
> These questions go to the heart of the integrity of the House and of the Democratic majority that elected Mr. St Germain to his chairmanship.... The substantive responsibilities of a person in Mr. St Germain's position are as great as those of any member of Congress. If he is innocent of the charges, he deserves to be publicly cleared of them; confidence in his actions is at stake, as is fundamental fairness to the man. If it is established that he has undermined his ability to fulfill those responsibilities by attempting to enrich himself improperly, it would be a grave dereliction of duty for Congress not to take stern disciplinary action.

See Exhibit E.

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In the same vein, Common Cause, the self-styled citizens lobby, issued a September 13, 1985 press release (Exhibit F) and sent letters to all members of the House Ethics Committee. (Exhibit G). Common Cause commented on the record and actions of an elected public official, and called for "an investigation concerning the allegations made about Rep. St Germain to determine if House rules have been violated and to report publicly on its findings." Id.

The editorials and requests for investigations attached as Exhibits C - J are all commentary and reports on the record and actions of an elected public official. They do not advocate the election or defeat of any candidate or solicit political contributions.

2. The NRCC

The NRCC, as an unincorporated association authorized by the Republican members of the United States House of Representatives, is obviously concerned with the reputation and effectiveness of that institution. Accordingly, the NRCC's duties and rights include constructive public commentary about the events of the day and the House as an effective body.

The NRCC also is an organization concerned with the performance, actions and the record of public officials. In the wake of the reports in the Wall Street Journal, the Providence Journal Bulletin and other newspapers in Rhode Island and around the nation, the NRCC participated in the public debate. Its views were those shared by the media and Common Cause. The NRCC commented on issues of public importance by: (1) aiding a local citizens group

which requested assistance for a mailing about Congressman St Germain (Exhibit K), and (2) producing and broadcasting a television message calling upon an elected public official to release information about his tax returns in order to clear up serious allegations made about his conduct while in public office, see, infra. at 8-9.

In response to a request from the Rhode Island Citizens for Accountability in Government ("Rhode Island Citizens"), NRCC assisted that organization with a mailing. As a condition for spending its funds, NRCC received assurances from Rhode Island Citizens that it would not advocate the election or defeat of any candidate.

As of January 28, 1986, the only announced candidates in Rhode Island's First Congressional District were Congressman St Germain and Edward P. Beard, a former congressman who announced his challenge to St Germain following the revelations of St Germain's actions. Both are Democrats. There are to this day no Republican candidates.

On February 17, 1986, Rhode Island Citizens sent to the House Committee on Standards of Official Conduct the signatures of 2,080 residents of the First Congressional District who responded to the mailing calling for an official investigation into the accusations against St Germain and for St Germain to disclose fully his tax and financial records. See Providence Journal, Feb. 18, 1986, at A7, col. 2.

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II. ARGUMENT

The DCCC alleges that: the "'Direct' mailing attacking the record of Mr. St Germaine" constitutes spending by NRCC subject to the spending limits of 2 U.S.C. 441a(d); the mailing (Exhibit K) lacked a required disclaimer, and this activity should have forced an individual, who is not an announced candidate, to announce his candidacy.

A. The Limits of 2 U.S.C. 441a(d) Are Not Implicated.

Section 441a(d) of Title 2 of the United States Code applies to expenditures made in connection with the campaigns of candidates for federal office. In Advisory Opinion 1985-14, the Commission "concluded that the limitations of section 441a(d) would apply where the communication both (1) depicted a clearly identified candidate and (2) conveyed an electioneering message." Fed. Election Camp. Fin. Guide (CCH) ¶ 5819 at 11,185 (May 30, 1985) (citing Advisory Opinion 1984-15).

In that same advisory opinion, the Commission defined "electioneering messages" as "statements 'designed to urge the public to elect a certain candidate or party." Id. (citing United States v. United Auto Workers, 352 U.S. 567, 587 (1957)); see also Advisory Opinion 1984-62, Fed. Election Camp. Fin. Guide (CCH) ¶ 5813 at 11,169 (March 21, 1985). Neither the mailing nor the television message at issue contain anything that could be construed as an "electioneering message."

1. The Mailing

The mailing in this case contains no "electioneering message" as defined previously by this Commission and the courts. In Advisory Opinion 1985-14, the Commission's latest decision on the subject, the mailing refers to "Republicans" and "your Republican congressman" and urges the reader to contact the "Republicans in Congress." Some versions also had the tag line "Vote Democratic." The mailing at issue in this case has no reference to any political party. See Exhibit K. Nor is there any reference to any election, either past or future. Id. There is no reference in the mailing to the election or defeat of any candidate. Id. There is no solicitation for any money in the mailing, nor any mention of St Germain's political campaign finances. Id. There is no Republican candidate in the First Congressional District of Rhode Island.

It is true that the mailing by Rhode Island Citizens (and the NRCC television message) identifies a public official and discusses his actions and record as a member of the United States House of Representatives. That is permitted under the Act and is the First Amendment right of the press in Rhode Island, the press around the country, Common Cause, Rhode Island Citizens, the NRCC and all citizens of this country.

The statements complained of by DCCC are indistinguishable from press reports, editorials and public comments. For example,

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the mailing states on its cover: "It's time to clear the air." (See Exhibit K). The Providence Journal Bulletin's September 13, 1985 editorial is entitled: "Mr. St Germain Can Help Clear the Air." (Exhibit C).

The mailing reports on the articles in the Wall Street Journal and the Providence Journal Bulletin and repeats their finding that "Congressman St Germain has amassed a multimillion dollar personal fortune by using his public position to help wealthy investors." Exhibit A. It requests that readers "sign the attached petition and mail it to us immediately." The petition asks the United States House of Representatives' Committee on Standards of Official Conduct to "investigate these serious charges" officially and further demands that St Germain publicly disclose his taxes and finances. That is nothing more than what Common Cause urged in its letter to the House Committee on Standards of Official Conduct and in its accompanying press release. Exhibits F, G.

NRCC's financial support for such mailings is not subject to any limitation under section 441a(d).

2. The Television Message

The DCCC argument that the television message at issue promotes the candidacy of John Holmes and triggers 2 U.S.C. 441a(d) is unsubstantiated by any citation to the message itself. The complete script of the message reads:

cg: TAXES dissolve ?	
Evelyn C. Green	CONGRESSMAN ST GERMAIN WON'T BE OUT OF TROUBLE UNTIL HE RELEASES HIS INCOME TAX FORMS.
Ezida M. Silva	IF HE DOESN'T HAVE ANYTHING TO HIDE, IT DOESN'T DO HIM ANY HARM TO RELEASE THEM.
John J. O'Brien III	I THINK HE SHOULD OPEN UP HIS BOOKS. THAT WAY IF HE'S CLEAN HE'S CLEAN. . .IF NOT, WE GOTCHA'.
Evelyn C. Green	WHAT HE'S DONE MAY NOT BE ILLEGAL, IT SEEMS UNETHICAL, BUT WE WON'T KNOW UNTIL HE COMES CLEAN WITH THE PUBLIC.
super: Tell us the truth Congressman St Germain. disclaimer in (over 1040 tax form)	Ann: TELL US THE TRUTH CONGRESSMAN ST GERMAIN.

These are the statements of Rhode Island citizens interviewed at random. An examination of the statements shows that none mentions any political party. There is no reference to any election, past or future. There is no mention of the election or defeat of any candidate. There is no solicitation for any money, nor any mention of St Germain's political campaign finances. There is no mention of John Holmes, the purported "candidate."

This message cannot violate the Act since it does not concern the election of a candidate for the House. See Advisory Opinion 1985-14, Fed. Election Camp. Fin. Guide (CCH) ¶ 5819 at 11,185 (May 30, 1985). The broadcast contains no "electioneering

message and no mention of any political party affiliation." Id. Accordingly, under AO 1985-14, this message does not implicate the Act and its broadcast is not a contribution.[1/]

B. No Notice is Required for the Mailing at Issue.

DCCC alleges that the mailing at issue requires a statutory notice.

Under 2 U.S.C. 441d(a) and 11 C.F.R. 110.11(a), notices are needed only if the "communications expressly advocate the election or defeat of a clearly identified candidate, or solicit any contribution."

The complaint does not, as it cannot, cite any language in the mailing that advocates the election or defeat of any candidate.[2/] The mailing does not solicit funds. The mailing does comment on the record and actions of an elected public official. But neither the mailing at issue nor, for example, the press release from Common Cause require notices under the Act.

1/ DCCC is correct that the television message included a sponsorship notice, since that is a prerequisite of the Federal Communications Act. The mailer at issue did not contain a notice because none was required. See 11 C.F.R. 110.11 and Section B, infra.

2/ The complaint also attempts to belittle the citizens group and its numerical strength, see Complaint at 4 n.1, as consisting of only "two founding members." On February 17, 1986, leaders of Rhode Island Citizens presented petitions signed by 2,080 persons to the House Committee on Standards of Official Conduct calling for an investigation into St Germain's actions and for the Congressman to release his tax returns. Providence Journal, Feb. 18, 1986, at A7, col. 2.

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C. Registration of a Candidate.

Since the activities alleged in the DCCC complaint consist of protected commentary on the actions and record of an elected public official, and do not contain an electioneering message, none of the costs of the activities are allocable to any candidate or potential candidate.[3/] In effect, the complaint is an attempt to stifle legitimate criticism by the Rhode Island Citizens for Accountability in Government and the NRCC about a controversial legislator.

The mailing and messages at issue in this matter address a matter of great public importance. But they do not advocate the election or defeat of any candidate. Nor do they solicit any funds. On the basis of Advisory Opinion 1985-14 payments for these activities are not contributions. Thus, they cannot create candidacy since the definition of a candidate in part presumes the receipt of contributions over a threshhold amount. 2 U.S.C. 431(2). Accordingly, any expenses paid by NRCC for these activities do not create candidacy for John Holmes or any other person.

3/ Assuming arguendo that any costs are allocated toward a candidate as a result of the mailing or the television message, then by the DCCC's logic they should be allocated to Edward P. Beard, the only announced candidate besides St Germain at the time of the mailing. NRCC, however, rejects the claim that a contribution has been made to any person.

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III. CONCLUSION

For the reasons set forth above the Commission should find no reason to believe that NRCC violated the Act.

Sincerely,

Jan W. Baran
General Counsel

Benjamin L. Ginsberg
Legal Counsel

8 6 0 4 0 5 9 3 5 5 7

Making a Fortune

As a Private Investor, House Banking Chief Has Grown Very Rich

Rep. St Germain Has Had Lots of Help From Those He Has Aided Officially

The Summer Life in Newport

By Brooks Jackson
And Tim Carrington
Staff Reporters of The Wall Street Journal

"I'm here to represent Mr. and Mrs. Consumer, like my mother and dad."—Rep. Fernand St Germain, in an interview.

WASHINGTON — While Raleigh Greene's Florida savings and loan association was seeking federal permission to issue stock in 1983, Rep. Fernand St Germain's top aide was repeatedly phoning regulators to check on the progress of the application. When the sale was approved, the congressman bought more than $15,000 [illegible] e newly issued stock.

Such is the private financial life of Rep. St Germain (he doesn't use the conventional period in his last name), who is chairman of the House Banking Committee and self-proclaimed champion of consumers and common folk like his working-class parents. Ever so quietly, during his 24 years in the House, the Rhode Island Democrat has become a millionaire. An examination of his private investments shows that, in acquiring his fortune, the congressman has had lots of investment help from people and institutions that have benefited from his official actions.

Fernand St Germain

As House banking chairman, the 57-year-old Mr. St Germain is among Congress's most powerful lawmakers. He presides with unusually strong authority over a committee that routinely handles multibillion-dollar matters that shape the nation's fast-changing financial system. He also is a force to be reckoned with at fed[illegible] banking agencies. And as his power [illegible]rown, so has his wealth. (The Internal Revenue Service is investigating what it terms "abusive" tax shelters into which the congressman put $120,000 of his money for $405,000 in promised tax ded[illegible]tions. See story on page 24.)

Close to the Vest

Mr. St Germain insists he has steered clear of ethical problems. "I have invested in diverse areas along with friends and business associates," he says. "At all times, I have been scrupulous to avoid conflicts." The congressman—who once boasted that his cards aren't close to his vest, "they're imprinted on my chest"—won't discuss many details of his personal holdings.

The analysis of his finances has been pieced together from his sometimes-incomplete financial-disclosure forms, from interviews, and from public records on file at the Securities and Exchange Commission in Washington and in more than a dozen state and county offices in Rhode Island, Florida, Texas, New York and Maryland. It includes these findings:

—Mr. Greene, the founder and chairman of Florida Federal Savings & Loan in St. Petersburg, Fla., arranged for Mr. St Germain to be included in several potentially lucrative real-estate investments in Florida. Meanwhile, Mr. St Germain's chief of staff contacted the federal Home Loan Bank Board on matters concerning Florida Federal.

Mr. Greene says he never asked Mr. St Germain to intervene on his behalf at federal agencies. He confirms that he invited the congressman into three land-ownership deals, which weren't offered to the public. "It's like anything else," Mr. Greene says. "You sit down with your buddies and say, 'Do you want in?' And you either say yea or nay."

—The foundation of Mr. St Germain's wealth, five International House of Pancakes restaurants, was bought with $1.3 million in mortgages from Rhode Island lending institutions that put up nearly 100% of the purchase price and assumed most of the risk. One lender then publicly praised Mr. St Germain's legislative help.

—Rep. St Germain is still reaping profits from earlier, publicized real-estate investments arranged by a Rhode Island developer, Roland Ferland, who himself profited from federally subsidized housing developments that the congressman helped obtain for the state.

Blue-Collar Constituents

The congressman still seeks to appeal to blue-collar constituents in his industrial hometown of Woonsocket. At a hearing last year, for example, he pounced on a witness who argued that a certain proposal was favored by a banker in Newport, part of Mr. St Germain's district. "Newport!" he sputtered. "That's where the millionaires have their mansions."

But Mr. St Germain has become a Newport millionaire himself, golfing there during the summer at country clubs, staying there at his recently acquired $200,000 condominium near the waterfront and dropping in at celebrity tennis matches and an America's Cup yacht christening. Newport's Republican Mayor Patrick Kirby marvels at the social blossoming of "the new Freddy."

In winter, the congressman has jetted with his wife on numerous speaking trips, for which lobbying and trade groups picked up the tab, to such sunny places as Puerto Rico, Boca Raton, Fla., and Hilton Head, S.C. He spends several weekends a year at his $138,900 condominium in a luxury high-rise building in St. Petersburg, Fla.

His holdings last year included restaurants valued at $1.9 million and a portfolio of stocks, real-estate partnerships and money-market mutual funds that he valued at between $325,017 and $9[illegible],000. He recently bought two more Florida condominiums as rental properties, a beach place near Punta Gorda for $190,000 and a golf-resort property in Titusville for $47,900.

Mr. St Germain didn't inherit his wealth; his father was a foreman in a dye plant. A lawyer, he didn't marry rich or make his fortune in the private sector. In 1964, after his congressional pay was raised to $30,000 a year from $22,000, he told a newspaper interviewer that members of Congress would never get rich in office. "Whatever you make, you're going to spend," he said then.

But as he climbed the seniority ladder to become Banking Committee chairman in 1981, his resulting power over the nation's banking, insurance, brokerage and construction industries expanded, and so did his wealth. An estimate of his net worth at the end of last year is between $2 million and $2.6 million, not counting a home in Woonsocket and a condominium residence in Washington, D.C.

Most recently, he has plunged into Florida real-estate investments with the help of Mr. Greene. Starting in December 1980, Mr. St Germain, Mr. Greene and others bought unimproved land around Alachua, Fla., near Gainesville, with the idea of subdividing it for sale as home sites. Neither man's name appears on deed or mortgage records, however, because the purchase was made through a trust, as permitted by Florida law. In his annual financial disclosures, Mr. St Germain values his investment in the Alachua deal at between $15,001 and $50,000. Mr. Greene confirms that he is a co-investor with the congressman.

About 1983 or before—Mr. St Germain has omitted the purchase date from his financial disclosures—the congressman acquired an interest, which he values at between $5,001 and $15,000, in a Tampa, Fla., parking lot that is also owned through a trust. Mr. Greene says he, some of his law partners and Mr. St Germain are co-investors.

In 1982, Messrs. Greene and St Germain joined with others to buy, through another anonymous trust, 160 acres of farmland in the path of development about five miles north of Tampa International Airport. Land records show the trustee paid about $1.7 million. The congressman's disclosures say he paid between $15,001 and $50,000 for his interest, and says it already produced income of between $5,001 and $15,000. Mr. Greene says he expects the land transactions to be profitable. "This is a booming part of the world," he says.

The fortunes of Mr. Greene's savings association depend in large part on legislation that passes through Mr. St Germain's committee. Furthermore, the congressman's chief of staff at the committee, Paul Nelson, has repeatedly contacted federal r 'ators concerning Florida Federal's a :ations.

In 1983, when Florida Federal was applying to convert itself from a depositor-owned mutual association to a stock corporation, Mr. Nelson called top board officials several times asking about the conversion plan. Through a press spokesman, Mr. Nelson denies any intent to bring pressure on the agency, saying "those were simply calls about the status, and no more than that."

Some board officials saw these calls as a none-too-subtle prodding, however. "When the chairman of the House Banking Committee makes the inquiry and is interested, you know he's not interested in having the thing turned down," says a former senior attorney at the agency.

That wasn't the first such contact. A bank-board official, now retired, recalls that he became "absolutely livid" when a St Germain aide called him to complain that Mr. Greene's son, Raleigh Greene III, who was then Florida Federal's outside counsel, had been treated rudely by the bank-board staff. Actually, the official says, "We treated him with complete courtesy, but we didn't give him what he wanted."

More recently, according to an attorney still employed at the agency, Mr. St Germain was "creating heat" on the agency's s ast summer to complete a review of a. pplication by Florida Federal to acquire First Mutual Savings & Loan Association of Pensacola, Fla. The bank board was insisting on several conditions, and the S&L eventually dropped the merger plan.

The Banking Committee chairman's relationship with Mr. Greene was well-known around the bank board, a former board member says. "I knew that Raleigh and Freddy were good friends," he says. "If I wanted to lobby Freddy, I would talk to Raleigh."

But this same former board member expresses astonishment when told that the two men were business partners and that the congressman had bought stock in Florida Federal shortly after the board cleared its sale. Mr. St Germain bought between $15,001 and $50,000 of the stock in mid-1983, but he omitted disclosure of the stock purchase when he filed his next annual financial return in May 1984. Last year, after being questioned by this newspaper about omissions on his disclosure form, the chairman filed an amended report that showed for the first time that he held common stock in the S&L.

(Federal law makes it a civil violation, punishable by a fine of up to $5,000, for a congressman to "knowingly and willfully" fail to report required information. In serio cases, it can be a felony punishable by five years in jail and a $10,000 fine fo a congressman to make "false or fraudulent statements" on his disclosure forms.)

Mr. Greene says he didn't discuss the stock purchase with the congressman or ask him to intercede with regulators. Mr. St Germain declined requests to be interviewed about the matter.

Soon after this newspaper began asking the congressman's press spokesman about the Florida Federal connection, Mr. St Germain sold the stock. He disclosed the sale in an unusual footnote to his latest disclosure report. "The acquisition was intended to be temporary," he said. "My entire interest in the (savings) association was sold on May 22, 1985." That was nearly two years after he bought the stock, and he probably lost money if he bought the shares at the initial offering price of $20 a share. It closed at $18.75 the day he says he sold it.

By the time he became Mr. Greene's business associate, Rep. St Germain was already comfortably fixed, thanks largely to an investment made in 1972, after he became chairman of the Subcommittee on Bank Supervision. Using money borrowed from Rhode Island lending institutions, including federally regulated banks, he quietly purchased five restaurant buildings from International Industries Inc. of Beverly Hills, Calif., franchiser of the International House of Pancakes chain.

His ownership of the restaurants for years was hidden from the public, and he disclosed the bare outlines of it in 1978 only when required by the new Ethics in Government Act. That disclosure didn't tell the whole story, but Common Cause, the self-styled citizens' group, said then that his large bank loans posed a potential conflict of interest. And his Republican congressional opponent, John J. Slocum, charged: "Here's a man who's been in Congress for the past 18 years, living off a congressional salary, maintaining two homes, traveling back and forth between his offices, and suddenly, lo and behold, at year's end 1977 he's got all the assets he has."

Rhode Island voters returned Mr. St Germain to office handily, but what they didn't know is that he got the loans without putting up much of a down payment. The new ethics law didn't require such information, and the congressman didn't volunteer it.

For example, deed and mortgage records show that the Rhode Island Hospital Trust, a national bank based in Providence, lent him $2,500 *more* than the $239,500 purchase price of a restaurant he bought in the Bronx borough of New York City. Similarly, records show that Industrial National Bank (now Fleet National Bank) of Providence, lent him a net total of $1,000 *more* than the combined purchase prices of two restaurants he bought within four days of each other, one in Providence and the other in nearby Cranston, R.I.

Not long after, according to newspaper accounts at the time, Old Stone Savings Bank, which held a mortgage loan of $236,550 on the congressman's restaurant in Richardson, Texas, printed Mr. St Germain's picture in the pre-election issue of its shareholders' newsletter in 1978 with a story praising him for legislation. The headline: "Old Stone wins congressional support in opposing reserve bill—would have reduced Old Stone earnings."

Mr. St Germain says he didn't do any special favors for his lenders. He says his

no-money-down financing was justified because the mortgages were secured both by the property and by leases executed by the tenants, giving the lenders assurances of adequate cash flow to cover the payments.

But lenders seem to have assumed the major risk. They lent the congressman a total of $1.3 million at a time when his congressional salary was $42,500. The mortgages didn't make Mr. St Germain personally liable for payments had any of the restaurant operators failed.

Though the congressman's risk was small, his profits have been substantial. Total gross rents amounted to $165,000 in 1978, the only time Mr. St Germain volunteered the exact amount. They have almost certainly escalated since because they are based on a percentage of the tenants' sales. Meanwhile, inflation sent the property values soaring. Last Dec. 31, the congressman sold his Providence, R.I., restaurant for $470,000, a nearly 59% gain over the purchase price. Official tax assessments of the remaining four restaurants indicate their values have risen at roughly the same rate. Land records indicate that Mr. St Germain probably cleared about $400,000 on the sale of the Providence restaurant.

The lending institutions that made all this possible won't comment on the transactions. "We don't discuss or give out any information about private individuals," says a spokesman for Fleet National Bank, which made two of the mortgage loans.

Mr. St Germain insists the loans were made "on market terms" and adds, "All the terms have been met. The loans were clearly good business for the financial institutions."

Mr. St Germain was introduced to real estate investing as early as 1971 by his longtime friend, political fund-raiser and fellow Woonsocket native Roland Ferland. While the congressman used his growing political leverage on the banking committee and with federal agencies to help obtain federally subsidized housing projects for Rhode Island, Mr. Ferland became one of the state's biggest developers and operators of those projects. In the early 1970s, Mr. St Germain asked to be allowed to invest in some of Mr. Ferland's unsubsidized luxury-apartment developments. "I said, 'If something comes along, I hope you'll consider me,' " the congressman recalls. Partnership records show he eventually put up an initial $12,500 to buy a 15% interest in two of Mr. Ferland's developments, and a 20% interest in a third. The records show he was the only investor outside the Ferland family.

The Ferland transactions paid handsome returns. Mr. St Germain, in his latest financial disclosures, reports selling a part interest in one Ferland partnership for between $100,000 and $250,000 in 1980 and reports receiving between $30,002 and $100,000 as a "cash distribution" from another during 1983 and 1984. His recent disclosures do not mention the third partnership, although land records show it was selling units as condominiums during 1983.

Mr. Ferland, who was treasurer of Rep. St Germain's first congressional campaign, is a founder and behind-the-scenes power of the political-action committee of the National Association of Home Builders. The PAC donated to Rep. St Germain's lightly contested 1984 reelection campaign, helping to swell his current campaign war chest to $602,650, one of the biggest of any House member. The congressman recently announced he will seek reelection again next year.

Mr. St Germain says he sees no ethical problem with his investments in the Ferland developments because the developments he owns don't receive direct federal subsidies. "I've always paid my share," he says. "No special considerations."

Indeed, the congressman maintains that he takes extra care to avoid being influenced by moneyed interests. He says he no longer accepts speaking fees for appearing at financial-industry gatherings (though the hosts still pay his expenses). "You can be very independent when you don't take honorariums," he says. "I think that we (in Congress) should be able to survive on what we get."

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Exhibit B

IRS: Tax shelters used by St Germain 'abusive'

The Wall Street Journal

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WASHINGTON — While other Democrats preached tax reform, Rep. Fernand St Germain was investing in some legally dubious tax shelters.

The House Banking Committee chairman cut his federal income taxes by putting money into shelters offering write-offs of more than $400,000 for a cash investment of $120,000 or less. The legality of the shelters — which were set up ostensibly to mine coal in Kentucky — is currently being challenged by the Internal Revenue Service.

Mr. St Germain won't disclose his returns, so it isn't known what taxes he actually paid, if any. But from Dec. 29, 1978, to March 31, 1982, he poured tens of thousands of dollars into a series of limited partnerships that, according to confidential private placement memorandums that the promoter circulated to potential investors, promised quick tax deductions of between $3.01 and $3.60 for every $1 paid in.

These tax shelters — Darnell Associates, Lighthouse Hill Associates, ARG-80 Associates and Trinity Associates — were put together by a securities firm in New York. Partnership records on file in various county courthouses in New York state show that Rep. St Germain put up no more than $120,000 cash, and perhaps as little as $105,000 plus a $15,000, non-interest-bearing IOU. For this cash, or cash and paper, the promoter's private-placement memorandums promised write-offs totaling $405,344 during the first two years of each partnership.

If the congressman was in the 50 percent tax bracket in each of the five years in question, he would have reduced his federal income taxes by a total of $202,672. That would have left him $82,672 ahead on the deal before the first lump of coal was sold.

As it happened, the partnerships were far more successful at mining the U.S. Treasury than they were in mining coal. The promotor, Swanton Corp. of New York City, earlier this year filed for protection from creditors under Chapter 11 of the bankruptcy law. Earlier, Swanton filed an extensive disclosure statement at the Securities and Exchange Commission in Washington showing that its coal-mining ventures had been miserable failures. In all, 48 partnerships promoted by Swanton from 1977 and 1984 mined only 1% of the coal they had originally projected and repaid the limited partnership only about two cents of each dollar they put in.

The four tax shelters in which the congressman put his money didn't fare any better than the others. Swanton's SEC filings, coupled with its confidential placement memorandums, show that the four partnerships in which he was included mined only 1.6% of the cost originally projected. One was discontinued and three others were "delayed" by "adverse market conditions," according to Swanton's disclosure statement. The limited partners were paid back an average of only 0.6 cent for every dollar they put in.

The IRS is currently contending that the partnerships were just a means to milk the tax system, not bona fide business ventures. Swanton disclosed in a public filing that the IRS, after a year-long investigation, told the company on April 15 that it believes Swanton's coal partnerships violated Section 6700 of the tax code. That section forbids promotion of "abusive" tax shelters, defined as partnerships that obtain tax benefits by means of fraud or gross overstatement of the value of property or services.

Swanton denies the allegation. "It is Swanton's position that it has not violated Section 6700 in any manner," the company says in an SEC filing. But Rep. St Germain could possibly face a demand from the IRS for payment of back taxes and interest. Swanton says the limited partnerships in its coal programs are likely to be audited because of the IRS's contention that they were abusive.

Mr. St Germain won't discuss these partnerships except to say in a letter that they "were for a twofold purpose. They provide what could be a tax shelter, and they were purchased during the period when experts felt that coal certainly was a good investment for a return in the future."

Yet the partnerships warned, in their confidential placement memorandum, that the promoter had mined only "minimal" amounts of coal in the past and was offering tax write-offs based on legal positions that the courts hadn't tested and with which the IRS "may not agree."

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P.J. Editorial 9/13/85

Exhibit C

Mr. St Germain can help clear the air

9/13/85

Rep. Fernand J. St Germain's substantial accumulation of wealth during 13 terms in Congress is in the news again. A tantalizing political topic locally for years, the matter reached a national forum this week with a *Wall Street Journal* article (reprinted yesterday in these newspapers) on the congressman's growing affluence in tandem with his ascendancy in the U.S. House. Mr. St Germain, chairman of the powerful House Banking Committee, reacted by rejecting any link between that position and his personal fortune — and by complaining the latter was far overestimated. On this final point, at least, he can easily end all speculation.

Mr. St Germain has announced for reelection in 1986. All he needs to do is what a number of other major Rhode Island political candidates have done in past years: publicize his income-tax returns and net-worth statements. Although such information is properly confidential for average citizens, its disclosure by public office-seekers is hardly unwarranted. This is particularly true in the case of an official whose private income has been the subject of repeated question.

Even without having aroused this kind of curiosity that has marked Mr. St Germain's personal finances, various candidates of both political parties have voluntarily given the public a complete financial accounting of themselves. Some who come quickly to mind include Richard J. Israel when running for attorney general, John Hawkins for U.S. Senate, J. Joseph Garrahy for governor and Vincent A. Cianci Jr. for mayor of Providence, as well as the incumbent mayor, Joseph R. Paolino Jr. If they found this course suitable, why not Mr. St Germain?

So far, the First District congressman has restricted his disclosures to those required by the federal Ethics in Government Act. This post-Watergate law demands only that congressmen report their finances within broad categories; exact figures remain shrouded. If such imprecision has contributed to what Mr. St Germain claims are exaggerated estimates of his holdings (pegged at between $2 million and $2.6 million by the *Wall Street Journal*), then the congressman ought to furnish his income-tax return and net-worth statement for a more accurate reading. Other candidates have adopted this as a good practice. It would seem specially appropriate for someone in Mr. St Germain's situation.

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Editorial! Washington Post Date? 9/18/85

Exhibit D

Washington ?

To the Ethics Committee

IN THE PAST two weeks, charges of varying seriousness have been made against two senior members of the House, Reps. Fernand St Germain (D-R.I.) and Dan Daniel (D-Va.). These both need to be resolved by the House ethics committee, though not necessarily in the same way.

Mr. Daniel has already pointed the way to a resolution in his case. He has admitted that he repeatedly flew back to his Southside district in planes owned by Beech Aircraft Corp., but did not report them on his disclosure form. House rules require disclosure of gifts, including transportation, worth more than $100, from companies with an interest in legislation. Mr. Daniel says he did not report these trips because the commercial airfare was $98 per trip. He has now agreed to reimburse the money and to amend his disclosure form. The ethics committee may want to consider the case, if only to clarify the law. But no one in the House seems to doubt Mr. Daniel's integrity, or to believe that he did anything worse than make an honest mistake.

The charges against Mr. St Germain, made in The Wall Street Journal last week by reporters Brooks Jackson and Tim Carrington, are on their face more serious. The Journal reported, first, that Mr. St Germain bought five International House of Pancakes restaurants with $1.3 million in loans from Rhode Island banks, on terms that required him to put up little or no cash. Second, the article reported Mr. St Germain profited from real estate investments arranged by a Rhode Island developer who profited from federally subsidized housing programs Mr. St Germain helped obtain for the state. Third, it said Mr. St Germain has benefited from land deals in Florida arranged by a developer who chairs a savings institution regulated by the Banking Committee, and that a top St Germain staffer made calls to federal regulators about applications by the developer's firms.

These charges raise, though they of course do not settle, the question of whether the chairman of the Banking Committee may have used his influence over legislation to enrich himself. It is undisputed that Mr. St Germain entered Congress in 1960 with minimal financial assets and now has a net worth over $2 million. His committee has jurisdiction over heavily regulated businesses, and any member should avoid more assiduously than Mr. St Germain seems to have done even the appearance of using his influence to enrich himself.

Why hasn't the ethics committee taken public action to look into these matters? The quick answer is, because no one has asked. No one, after all, likes to take on the chairman of an important committee. It is possible that the committee is conducting an investigation already—it won't comment on that. If it is not, it should. This is one case where House members' natural reluctance to investigate one of their colleagues should be outweighed by their concern for upholding proper ethical standards and for the reputation of the House itself.

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Exhibit E

And Mr. St Germain?

THE HOUSE ethics committee voted Thursday to begin a preliminary inquiry into the case of Rep. Dan Daniel (D-Va.). Well and good. Mr. Daniel accepted and did not disclose 23 free airplane trips back and forth to his district from Beech Aircraft Corp., although House rules forbid accepting a total of $100 or more a year in gifts from corporations with legislation before Congress and require disclosure of any gifts worth more than $250. During the same period, Mr. Daniel urged Congress to buy Beech's C12 for the Pentagon. Mr. Daniel has apologized on the floor of the House, has sent the company a check to pay for the rides, and has amended his disclosure forms. Still, the ethics committee should investigate and report, to clarify the rule and to help House members decide whether any further discipline is warranted.

We hope the committee's failure to announce at the same time any formal action in the case of Rep. Fernand St Germain (D-R.I.) does not represent anything more than a bit of delay. For facts alleged by Brooks Jackson and Tim Carrington in The Wall Street Journal raise a more serious question than anyone has alleged in Mr. Daniel's case. The question is whether Mr. St Germain, chairman of the House Banking, Finance and Urban Affairs Committee, has used his high position to enrich himself improperly.

These questions go to the heart of the integrity of the House and of the Democratic majority that elected Mr. St Germain to his chairmanship. The Banking Committee has jurisdiction over institutions that are necessarily closely regulated by government. Confidence in banks and savings institutions is essential to the operation of the economy, and in recent years that confidence has been shaken by the depositor runs and allegations of abuse of trust by insiders. The substantive responsibilities of a person in Mr. St Germain's position are as great as those of any member of Congress. If he is innocent of the charges, he deserves to be publicly cleared of them; confidence in his actions is at stake, as is fundamental fairness to the man. If it is established that he has undermined his ability to fulfill those responsibilities by attempting to enrich himself improperly, it would be a grave dereliction of duty for Congress not to take stern disciplinary action.

It is the ethics committee's responsibility to investigate the charges. Members of Congress are understandably reluctant to accuse their colleagues of misconduct. But surely they understand that misconduct by a member in a position of high trust, with pivotal responsibilities in a most sensitive regulatory area, must be either cleared or rebuked if the reputation of Congress generally, and of the majority party in the House in particular, are not to suffer harm.

WASHINGTON POST 9/22/85

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CommonCause

Exhibit F

For Release: IMMEDIATE
Friday, September 13, 1985

For Information: Virginia Sassaman

COMMON CAUSE CALLS FOR HOUSE ETHICS COMMITTEE

INVESTIGATIONS OF REPRESENTATIVES DANIEL AND ST GERMAIN

Common Cause today called on the House Ethics Committee to investigate recent allegations about Representatives Dan Daniel (D-VA) and Fernand St Germain (D-RI) to determine if House rules have been violated.

In separate letters to committee members, Common Cause raised the two cases, noting the following:

-- on September 10, 1985 the Richmond News Leader reported that Daniel, a senior member of the House Armed Services Committee, travelled "on an aircraft of a defense contractor" and "has not reported the travel on financial disclosure forms in recent years." House rules prohibit the acceptance of gifts of $100 or more from those having a direct interest in legislation before the Congress and require disclosure of gifts of transportation from others.

When asked if he knew whether he had complied with the gift limitation, Daniel told the Richmond News Leader, "I really don't, and the truth of the matter is, I don't care."

-- on September 11, 1985 the Wall Street Journal reported that Representative St Germain "has received lots of investment help from people and institutions that have benefited from his official actions" and listed a number of allegations concerning St Germain's private investments and his position as Chairman of the House Banking, Finance and Urban Affairs Committee.

The Code of Ethics for Government Service instructs Members never to accept "benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties."

Common Cause called for the Committee to investigate in both cases whether House rules had been violated and to issue a public report of their findings.

Copies of the two letters and the respective newspaper articles which raised the allegations are attached.

# # #

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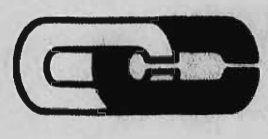
Exhibit G



common cause
2030 M STREET, N.W., WASHINGTON, D. C. 20036 (202) 833-1200

Archibald Cox
Chairman

Fred Wertheimer
President

John W. Gardner
Founding Chairman

September 13, 1985

The Honorable Julian C. Dixon
Committee on Standards of Official Conduct
HT-2 Capitol
Washington, D.C. 20515

Dear Chairman Dixon:

Allegations concerning Representative St Germain's private investments and his position as Chairman of the House Banking, Finance and Urban Affairs Committee appeared in the Wall Street Journal on September 11, 1985. This press report indicated that Rep. St Germain "has had lots of investment help from people and institutions that have benefited from his official actions."

The Code of Ethics for Government Service (72 Stat. Part 2, B 12, para. 5) instructs Members never to "discriminate unfairly by the dispensing of special favors or privileges to anyone," nor to accept "benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties."

The House Ethics Manual states that this provision would look to the "relationship between the receipt of benefits from a private source and the official duties or acts of a Member . . . as to any appearances of possible improprieties, undue influences, or breaches of the public trust in violation of this provision which, as noted by the House Committee on Standards of Official Conduct, works to 'prohibit conflicts of interest and the use of official position for any personal benefit.'"

Common Cause believes it is essential for the Committee on Standards of Official Conduct to initiate an investigation concerning the allegations made about Rep. St Germain to determine if House rules have been violated and to report publicly on its findings.

Sincerely,

Fred Wertheimer
President

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Exhibit H

Freddy and his friends

Rep. Fernand J. "Freddy" St Germain, chairman of the House Banking Committee, is not the first member of Congress to enrich himself through conflicts of interest. It would be vain to hope that he would be the last. But if the House wants to be something more than a national laughing stock, it had better get about punishing him in ways that might deter others for at least a little while.

St Germain's conduct, as exposed this week by the *Wall Street Journal*, calls at the minimum for the House to reprimand or censure him and dump him from his chairmanship in the event that his traditionally indulgent Rhode Island constituents insist on re-electing him next year.

It would also seem to warrant a federal criminal investigation into his failure to report his ownership of substantial stock in Florida Federal Savings and Loan when he filed his financial disclosure form for 1984. When he finally disclosed it this year — after he knew the *Journal*'s reporters were on his case — he offered the ingenious excuse that "the acquisition was intended to be temporary." What stock speculations aren't?

ST GERMAIN'S deep involvement with Florida Federal and with its chief executive, Raleigh Greene, is all the more questionable because of St Germain's extensive legislative efforts in behalf of the thrift industry. When St Germain appeared here for Florida Federal's 50th anniversary celebration and office tower groundbreaking in January 1983, he boasted that his recently enacted deregulation bill would give savings and loans the power to compete against banks and brokerage firms in a full range of financial services. Was this because he truly believed in the bill? Or because his good buddy, Greene, had been cutting him into three promising Florida land deals and had helped him finance a condominium in Bayfront Tower?

The *Journal* also disclosed that certain Rhode Island banks lent him nearly the full purchase price and assumed most of the risk when St Germain bought five pancake restaurants with $1.3-million in mortgages. Were the banks so generous because they liked him? Or because they feared his wrath?

St Germain's bad judgment is proportionate to his power as a committee chairman, which is nearly absolute, and which he has used with definite partiality toward the thrifts. Despite criticism, he kept the chairmanship of the Financial Institutions Subcommittee after attaining the full committee chairmanship in 1981. It hardly needs to be said that it was wrong for St Germain's staff director to be pressuring federal banking regulators in support of Florida Federal's stock conversion and other matters involving the St. Petersburg institution. St Germain's subsequent purchase of Florida Federal stock looks especially questionable for that.

FOR HIS part, Greene told the *Journal* that he never asked St Germain to intercede with federal regulators. For *his* part, St Germain isn't saying much except to accuse the *Journal* of viewing his affairs "in the worst possible light." The best possible light wouldn't be any too good.

Greene did admit that he had invited St Germain into the Florida real estate deals. "It's like anything else," he told the *Journal*. "You sit down with your buddies and say 'Do you want in?' And you either say yea or nay." Give Greene credit for a candid commentary on certain forms of business practice, but not for his judgment in exposing himself and his institution to potential criticism. There's something wrong with the system when powerful bankers are "buddies" with the chairman of a congressional banking committee and cut him in on land deals not offered to the general public.

It's nice to know, however, that even St Germain has his limits. Notwithstanding his lucrative private banking deals, he doesn't accept honorariums for speaking at banking industry conventions. "You can be very independent when you don't take honorariums," he said. "I think that we (in Congress) should be able to survive on what we get."

They should and they do. The question is where they get it.

The St. Petersburg Times

9/13/85

ART ISA 9-13-85

8604059356 9

Exhibit I

St Germain Defends Finances

PROVIDENCE, R.I., Sept. 11 (AP) — Representative Fernand J. St Germain criticized The Wall Street Journal today for reporting that he has received investment aid from people and institutions that have benefited from his actions as chairman of the House Banking Committee.

"I have made investments with the objective of providing for my family," the Rhode Island Democrat said in a statement. "For reasons best known to its reporters and editors, The Wall Street Journal has gone to great lengths to cast these investments in the worst possible light.

"I have scrupulously avoided any official actions on my part which would have created conflicts of interest in connection with these investments."

In a front-page article in today's issue, The Journal said it had analyzed Mr. St Germain's finances from his financial disclosure forms, interviews and records at the Securities and Exchange Commission and more than a dozen state and county offices.

Purchases of Real Estate

The newspaper reported that Mr. St Germain, who represents a mostly blue-collar district in eastern Rhode Island, had bought a $200,000 condominum at Newport, R.I., also in his district, and two Florida properties for nearly $240,000.

It said Mr. St Germain owns restaurants worth $1.9 million plus stocks, real estate and mutual funds valued between $325,000 and $940,000.

The Journal also said the Internal Revenue Service is investigating what that agency terms "abusive tax shelters" in which the Congressman has invested $120,000 for promised tax deductions of $405,000.

Mr. St Germain, 57 years old, said the article contained "unfair and unsupported innuendos," but he said he would not "engage in a drawn-out point-by-point argument."

The newspaper said the 13-term Congressman had bought $15,000 worth of stock in Florida Federal Savings and Loan after a top aide repeatedly phoned Federal regulators to check on the progress of the institution's application to issue the stock.

Mr. St Germain's chief of staff at the Banking Committee, Paul Nelson, said the calls had been made only to learn the status of the stock proposal.

Role of Thrift Executive

The Journal also said Raleigh Greene, president of Florida Federal, had arranged for Mr. St Germain to take part in several lucrative real estate deals.

Mr. Greene, who said he had never asked Mr. St Germain for help in Washington, confirmed that he had invited the Congressman to participate in three real estate investments that were not offered to the public.

The newspaper also said Mr. St Germain had obtained loans from two Rhode Island banks for amounts in excess of the purchase price of restaurants for which he secured no-money-down financing.

Mr. St Germain said he did no special favors for the banks, which lost him $1.3 million when his Congressional salary was $42,500 a year. "The loans were clearly good business for the financial institutions," he said.

The Journal also said court records in New York show that Mr. St Germain invested up to $120,000 in tax shelters and was promised write-offs totaling $405,344 during the first two years of the partnerships. The I.R.S. contends that the tax shelters were just a means to milk the tax system, not bona fide business ventures, the newspaper said.

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New York Times, Sept. 12, 1985

D21

P.J 9/19/85

Exhibit J

Post urges probe of St Germain

9/19/85

By JOHN MULLIGAN
Journal-Bulletin Washington Bureau

WASHINGTON — The Washington *Post* yesterday called for an investigation into a newspaper report that Rep. Fernand J. St Germain of Rhode Island has become a millionaire with help from people and institutions that have gained from his actions as House Banking Committee chairman.

Any House member "should avoid more assiduously than Mr. St Germain seems to have done even the appearance of using his influence to enrich himself," the newspaper said in an editorial that called for a House ethics committee investigation.

The editorial specifically cited three elements in a *Wall Street Journal* report:

"... First, that Mr. St Germain bought five International House of Pancakes restaurants with $1.3 million in loans from Rhode Island banks, on terms that required him to put up little or no cash.

"Second (that St Germain) profited from real estate investments arranged by a Rhode Island developer who profited from federally subsidized housing programs Mr. St Germain helped obtain for the state.

"Third (that St Germain) has benefited from land deals in Florida arranged by a developer who chairs a savings institution regulated by the Banking Committee, and that a top St Germain staffer made calls to federal regulators about applications by the developer's firms."

St Germain aide Richard L. Maurano said that if the ethics panel decides "to look into something, they'll find that he's done nothing wrong. It's their call."

Maurano noted that St Germain will appear on a television interview show in Providence this weekend to discuss the matter.

The office of Rep. Julian C. Dixon, D-Cal, the ethics panel's chairman, did not answer a request for comment.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel Rd

DATE: February 11, 1986

SUBJECT: MUR 2116 - 1st General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS		DISTRIBUTION	
48 Hour Tally Vote	[ ]	Compliance	[XX]
Sensitive	[ ]		
Non-Sensitive	[ ]	Audit Matters	[ ]
24 Hour No Objection	[XX]	Litigation	[ ]
Sensitive	[XX]		
Non-Sensitive	[ ]	Closed MUR Letters	[ ]
Information	[ ]	Status Sheets	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Advisory Opinions	[ ]
Other	[ ]	Other (see distribution below)	[ ]

8604059357 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE
GENERAL COUNSEL

FROM: MWE MARJORIE W. EMMONS / CHERYL A. FLEMING CAF

DATE: FEBRUARY 12, 1986

SUBJECT: MUR 2116 - First General Counsel's Report
Signed February 10, 1986

The above-named document was circulated by the Commission Secretary's Office to the Commissioners on a 24 hour no-objection basis at 4:00 P.M., Tuesday, February 11, 1986.

There were no objections received in the Office of the Secretary of the Commission to the First General Counsel's Report at the time of the deadline.

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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D. C. 20463

RECEIVED
OFFICE OF THE FEC
COMMISSION SECRETARY

FIRST GENERAL COUNSEL'S REPORT

86 FEB 11 P12:36

SENSITIVE

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION _____

MUR # 2116
DATE COMPLAINT RECEIVED
BY OGC 12/23/85
DATE OF NOTIFICATION TO
RESPONDENT 1/9/86
STAFF MEMBER
Michele Brown

COMPLAINANT'S NAME: Robert F. Bauer on behalf of the Democratic Congressional Campaign Committee

RESPONDENTS' NAMES: National Republican Congressional Committee and Jack McDonald, as treasurer, Republican National Committee, William J. McManus, as treasurer, and John A. Holmes, Jr.

RELEVANT STATUTE: 2 U.S.C. §§ 431(2), (9), (14), (18), 432(e)(1), 441a(d), 441d
11 C.F.R. 100.8(b)(1), 104.3(b)(3)(viii), 110.7(a)(4)

INTERNAL REPORTS CHECKED: National Republican Congressional Committee

FEDERAL AGENCIES CHECKED: None

STATEMENT OF THE CASE

The Democratic Congressional Campaign Committee ("DCCC") alleges that the National Republican Congressional Committee ("NRCC"), the Republican National Committee ("RNC") and John A. Holmes, Jr. ("Respondents") seek the defeat of first district incumbent Congressman Fernand St. Germain in the 1986 general election and the election of Republican John A. Holmes, Jr. DCCC alleges the respondents have expended funds in a coordinated effort through mass media and mailings to promote the candidacy of Mr. Holmes and to defeat Congressman St Germain.

86040593574

Specifically, the efforts include $15,000 in television advertisements prepared and paid for by the NRCC. According to the complaint, ads are broadcast within the first district and they question Congressman St Germain's personal finances and conduct in office. Rhode Island Citizens for Accountability in Government sent what Complainant calls $10,000 worth of companion mailings on the same theme to the Congressman's constituents. DCCC alleges that the Rhode Island Citizens organization is a sham and that the NRCC paid for the mailing. The complaint lastly alleges that the RNC has spent $15,000 for polls to lay the foundation for Mr. Holmes' nomination and election to Congressman St Germain's seat.

The Office of General Counsel sent notice of the complaint to the respondents on January 9, 1986. The Republican National Committee has submitted its response to the notification, however, the National Republican Congressional Committee has requested an extension of 20 days to respond. The Office of General Counsel has granted an extension until February 19, 1986, and has so notified the NRCC.

Once the Office of General Counsel has received and reviewed all of the responses, it will make a further report to the Commission with recommendations.

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Charles N. Steele
General Counsel

February 10, 1986
Date

BY: Kenneth A. Gross
Kenneth A. Gross
Associate General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 30, 1986

Benjamin L. Ginsberg
Legal Counsel
National Republican Congressional Committee
320 First Street, S.E.
Washington, D.C. 20003

Re: MUR 2116
National Republican Congressional Committee

Dear Mr. Ginsberg:

This is in reference to your letter dated January 23, 1986, requesting an extension of 20 days to respond to the Commission's notification of receipt of a complaint. After considering the circumstances presented in your letter, the Commission has determined to grant you your requested extension. Accordingly, your response will be due on February 19, 1986.

If you have any questions, please contact Michele Brown, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

86040593576

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Benjamin L. Ginsberg
Legal Counsel
National Republican Congressional Committee
320 First Street, S.E.
Washington, D.C. 20003

Re: MUR 2116
National Republican Congressional
Committee

Dear Mr. Ginsberg:

This is in reference to your letter dated January 23, 1986, requesting an extension of 20 days to respond to the Commission's notification of receipt of a complaint. After considering the circumstances presented in your letter, the Commission has determined to grant you your requested extension. Accordingly, your response will be due on February 19, 1986.

If you have any questions, please contact Michele Brown, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

86040593577

RECEIVED THE FEC
CCCH9557
86 JAN 27 A10:20

Republican
National
Committee

E. Mark Braden
Chief Counsel

Michael A. Hess
Randall Davis
Deputy Chief Counsels

January 21, 1986

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

86 JAN 27 P2:33
RECEIVED
GENERAL COUNSEL

RE: MUR 2116

ATTN: Kenneth A. Gross,
Associate General Counsel

86040593578

Dear Mr. Steele:

I am writing in response to your letter of January 9, 1986, addressed to Mr. William J. McManus, stating that the Federal Election Commission has received a complaint alleging that the Republican National Committee may have violated certain sections of the Federal Election Campaign Act of 1971 as amended (FECA).

Your letter enclosed a complaint from the Democratic Congressional Campaign Committee (DCCC). This complaint provided no factual allegations upon which it is possible to conclude that the Republican National Committee may have violated any provisions of the Federal Election Campaign Act. For this reason, the Commission should take no action against the RNC.

The only actions of the RNC alluded to in the complaint are newspaper reports of a poll conducted in Rhode Island.

The RNC did commission Decision Making Information (DMI) to conduct a poll in the First Congressional District of Rhode Island. The poll entailed approximately forty-eight (48) questions, and the Committee paid DMI $11,400.00 for their work. The survey was completed on August 5, 1985. The results of the survey were transmitted to the Chairman of the Rhode Island Republican Party, Mr. Holmes, on August 22, 1985. It is not clear from the complaint which specific provisions of the Federal Election Campaign Act the DCCC is asserting that this action violates. There is no allegation that

the RNC has improperly reported this activity or any disbursements for it. Such disbursements would not be in excess of any contribution or expenditure limits. No provision of the Act would prohibit any disbursements for such activities by the RNC.

For these reasons, the complaint should be dismissed.

Very truly yours,

E Mark Braden /RD

E. Mark Braden

EMB:jd

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epublican
ational
ommittee

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WASHINGTON, DC 200
-PM
24 JAN
1986

USA
22

NATIONAL
CHILDREN'S
DENTAL HEALTH WEEK

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

FEC
02 JAN 21 AM 10:20

GCC#9550

National Republican Congressional Committee

320 FIRST STREET, S.E. • WASHINGTON, D.C. 20003 • 202-479-7000

Brown

GENERAL COUNSEL
Jan W. Baran

LEGAL COUNSEL
Benjamin L. Ginsberg

January 23, 1986

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
86 JAN 24 P1:12

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

Dear Mr. Steele:

Re: MUR 2116

On behalf of the National Republican Congressional Committee ("NRCC"), I hereby request a 20-day extension of the time granted the NRCC for responding to the above captioned matter. NRCC requests this extension in order to gather all the information and exhibits needed to respond to the complaint. Accordingly, NRCC will submit its reponse on or before February 17, 1986.

Thank you for your consideration.

Sincerely,

Benjamin L. Ginsberg

Benjamin L. Ginsberg
Legal Counsel

8604059581

Paid for by the National Republican Congressional Committee. Not produced at government expense.

6083

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 9, 1986

Mr. Jack McDonald
National Republican Congressional
Committee
320 First Street, S.E.
Washington, D.C. 20003

Re: MUR 2116

Dear Mr. McDonald:

This letter is to notify you that the Federal Election Commission received a complaint which alleges that the National Republican Congressional Committee and you, as Treasurer, may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2116. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against the National Republican Congressional Committee and you, as Treasurer, in 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 completing the enclosed form 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.

86040593582

If you have any questions, please contact Michele Brown, the staff member assigned to this matter at (202) 376-8200. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

Kenneth A. Gross (LEF)

By: Kenneth A. Gross
Associate General Counsel

Enclosures
Complaint
Procedures
Designation of Counsel Statement

R 6 0 4 0 5 9 3 5 8 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 9, 1986

Mr. William J. McManus
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

Re: MUR 2116

Dear Mr. McManus:

This letter is to notify you that the Federal Election Commission received a complaint which alleges that the Republican National Committee and you, as Treasurer, may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2116. Please refer to this number in all future correspondence.

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86040593584

If you have any questions, please contact Michele Brown, the staff member assigned to this matter at (202) 376-8200. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steeele
General Counsel

Kenneth A Gross (LGT)

By: Kenneth A. Gross
Associate General Counsel

Enclosures
Complaint
Procedures
Designation of Counsel Statement

8604059358 5

6081

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 9, 1986

Mr. John A. Holmes
P.O. Box 160
Barrington, RI 02806

Re: MUR 2116

Dear Mr. Holmes:

This letter is to notify you that 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"). A copy of the complaint is enclosed. We have numbered this matter MUR 2116. Please refer to this number in all future correspondence.

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86040593586

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Sincerely,

Charles N. Steele
General Counsel

Kenneth A. Gross (MH)

By: Kenneth A. Gross
Associate General Counsel

Enclosures
Complaint
Procedures
Designation of Counsel Statement

8604059358 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 9, 1986

Robert F. Bauer, Esq.
Perkins Coie
1110 Vermont Avenue, N.W.
Washington, D.C. 20005

MUR 2116

Dear Mr. Bauer:

This letter is to acknowledge receipt of your complaint which we received on December 20, 1985, which alleges violations of the Federal Election Campaign laws by the National Republican Congressional Committee, Republican National Committee, and Mr. John Holmes. A staff member has been assigned to analyze your allegations. The respondent will be notified of this complaint within five days.

You will be notified as soon as the Commission takes final action on your complaint. Should you have or receive any additional information in this matter, please forward it to this office. We suggest that this information be sworn to in the same manner as your original complaint. For your information, we have attached a brief description of the Commission's procedure for handling complaints. If you have any questions, please contact Michele Brown at (202) 376-8200.

Sincerely,

Charles N. Steele
General Counsel

Kenneth A Gross (MB)

By: Kenneth A. Gross
Associate General Counsel

Enclosure

8604059358 8

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C 20463

Mr. John A. Holmes
P.O. Box 160
Barrington, RI 02806

Re: MUR 2116

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Sincerely,

Charles N. Steele
General Counsel

RHT 1/9/86

By: Kenneth A. Gross
Associate General Counsel

Enclosures
Complaint
Procedures
Designation of Counsel Statement

86040593590

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Mr. Jack McDonald
National Republican Congressional
Committee
320 First Street, S.E.
Washington, D.C. 20003

Re: MUR 2116

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8 6 0 4 0 5 9 3 5 9 1

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Sincerely,

Charles N. Steele
General Counsel

1/9/86

By: Kenneth A. Gross
Associate General Counsel

Enclosures
Complaint
Procedures
Designation of Counsel Statement

8 6 0 4 0 5 9 3 5 9 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Mr. William J. McManus
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

Re: MUR 2116

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8 5 0 4 0 7 9 3 5 9 3

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Sincerely,

Charles N. Steeele
General Counsel

1/9/86

By: Kenneth A. Gross
Associate General Counsel

Enclosures
Complaint
Procedures
Designation of Counsel Statement

8604059359 4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert F. Bauer, Esq.
Perkins Coie
1110 Vermont Avenue, N.W.
Washington, D.C. 20005

MUR 2116

Dear Mr. Bauer:

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Sincerely,

Charles N. Steele
General Counsel

mb 1/9/86

By: Kenneth A. Gross
Associate General Counsel

Enclosure

8604059395

OGC Docket

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: THE COMMISSION

FROM: MARJORIE W. EMMONS/ ARNITA D. HESSION a.H

DATE: JANUARY 3, 1986

SUBJECT: MUR 2116 - Complaint

The attached has been circulated for your information.

Attachment

86040059359 6

RECEIVED AT THE FEC
GCC#9243
85 DEC 20 P 4:24
HAND DELIVERED
86 JAN 3 A 8:55
SECRETARY

COMPLAINT

BEFORE THE

FEDERAL ELECTION COMMISSION

I. INTRODUCTION

The Democratic Congressional Campaign Committee ("DCCC") files this complaint challenging numerous and significant violations of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431 et seq. ("FECA"), and related regulations of the Federal Election Commission, by the National Republican Congressional Committee ("NRCC"); the Republican National Committee ("RNC"); Mr. John A. Holmes, Jr., a candidate for nomination for election to the House of Representatives from the First District of Rhode Island; and other individuals and organizations whose identities may be revealed in connection with a full investigation by the Commission ("Respondents").

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GENERAL COUNSEL

II. FACTS

DCCC attaches, for the review of the General Counsel, a series of clippings from various news organizations reporting on recent activities of Respondents. These Respondents seek the defeat in the 1986 general election of the First District incumbent Congressman Fernand St Germain and the election of Republican John A. Holmes, Jr. To this end, Respondents NRCC and RNC, in particular, are expending substantial funds, apparently in excess of $40,000 (forty thousand dollars).

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These funds have been spent in a coordinated effort though mass media and mailings to promote the candidacy of Mr. Holmes and to undermine the candidacy of Congressman St Germain. The components of this coordinated program are as follows:

1. Fifteen thousand dollars ($15,000) in television advertisements prepared and paid for by NRCC, and broadcast within and directed to the First District, which assail the personal finances and conduct in office of Congressman St Germain. (Exhibit A.)

2. Ten thousand dollars ($10,000) in "companion" mailings on the same political theme, also directed to the Congressman's constituents, which are paid for by NRCC but which bear only the name of a sham organization, "Rhode Island Citizens for Accountability in Government." (Exhibits B and C.)

3. At least fifteen thousand dollars ($15,000) in polling by RNC to lay the foundation for the campaign for John Holmes for nomination and election to the First District Rhode Island seat now held by Congressman St Germain. (Exhibits D and E.)

All of these activities have been financed in coordination and cooperation with Mr. Holmes and his closest political associates.

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III. VIOLATIONS OF LAW

A. NRCC Evasion of §441a(d) Limits in Connection With "Direct" Mailing Attacking the Record of Mr. St Germaine

Commission Advisory Opinion 1985-14, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5819 (May 30, 1985), is dispositive on this issue. Direct mailings of this nature, even if framed without an explicit "electioneering" message, are subject in full to the limits which apply to a party's support of its general election candidates. See also 2 U.S.C. §441a(d).

NRCC apparently does not intend to comply with these limits. In the news article marked Exhibit F, an NRCC "field representative" is either unaware of or indifferent to the Commission's holding in Advisory Opinion 1985-14. This NRCC official contends that the apparent absence from the mailing of both a formally declared Republican candidate and of an explicit "electioneering" statement obviates the need for an allocation to the limits. Advisory Opinion 1985-14 demonstrates that this is a false, likely a wilfully false, reading of the law and of the Commission's position on the law.

B. NRCC Violation of "Disclaimer" Requirements

NRCC's mailing has been prepared without any reference to a conceded fact: NRCC paid for this mailing in full, including NRCC staff time in "polishing" (Exhibit C) the written text and handling the mechanical requirements for mailing.

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Apparently because NRCC intended to conceal its involvement, perhaps as part of a strategy to avoid §441a(d) limitation issues, NRCC did not add a "disclaimer" identifying its sponsorship in accordance with 2 U.S.C. §441d. NRCC did add such a disclaimer to its television advertisements on this same subject over the same period -- but such a disclaimer is a condition precedent to acceptance for broadcast under the Federal Communications Act. 47 U.S.C. §317. NRCC, however, had reasons to disregard the similar FECA requirement as it applied to its mailing.

As a result, NRCC's involvement in this mailing was disclosed only to those of its recipients who came upon news disclosure of that involvement. The mailing itself had the name of the "Rhode Island Citizens" group -- and no reference at all to NRCC.[1/]

Section 441d was thereby wilfully and wholly violated.

C. Failure of John A. Holmes, Jr. to Register as a "Candidate" Under the FECA

News reports clearly demonstrate that all of the activities described in this Complaint reflect a coordinated and concerted effort by Respondents to promote the nomination and election of John A. Holmes, Jr., to replace the incumbent

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1/ The organization surfaced the month before the mailing, "with two founding members," and it apparently has only those two members today. (Exhibit C.) No article or other report suggests that this "organizaton" was meant to do more than "monitoring St Germain and paving the way for Republican challengers." (Exhibit F.)

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Democratic Member of Congress from the First District of Rhode Island. Because of the nature of these activities, including their clear coordination with Mr. Holmes and his closest associates, the expenditures associated with these activities have exceeded the threshold requirements for the formal registration of Mr. Holmes' candidacy under the FECA. 2 U.S.C. §431(2). Conversely, none of these actions, taken alone or in context, can properly be qualified as expenditures for "testing the waters" which would otherwise be available as a basis for avoiding registration at this time.

1. The Mailing

The direct mailing funded by NRCC, and described fully elsewhere in this Complaint, constitutes an allocable expenditure subject to the limitations which apply to NRCC's spending on behalf of its First District general election candidate under §441a(d). See p. 3 of this Complaint. Moreover, the making of this expenditure was coordinated closely with Mr. Holmes, through one of his close political associates who participated in the establishment of NRCC's "front" organization, Rhode Island Citizens for Accountability in Government. Specifically, news reports (Exhibits C and E) indicate the involvement in this scheme of Mr. Thomas J. Cashill, described as a "close friend of Republican State Chairman John A. Holmes, Jr., who is expected to be the GOP First District nominee." (Exhibit C.) A Commission investigation pursuant to this Complaint will reveal, as these

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news reports demonstrate, that Mr. Holmes was fully involved with and consented to the preparation and dissemination of this mailing. As NRCC, the financier of this mailing, has admitted that the mailing cost no less than $10,000, there is no question that the monies expended for this purpose with Mr. Holmes' consent exceeded the $5,000 threshold upon which FECA candidacy is based.

There is, moreover, no basis under the law for Mr. Holmes to allege that his activities constituted solely "testing the waters." Under testing the water regulations, only recently revised and reissued by the Commission, testing the waters activities cannot be conducted through direct political advertising clearly designed to promote the candidacy of the individual involved in those activities. 11 C.F.R. §100.7(b)(1)(ii) (testing the waters exemption "does not apply to funds received for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign.") See also FEC Advisory Opinion 1982-32, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5620 (October 2, 1981).

In Advisory Opinion 1985-14, the Commission held specifically that public political advertising of the nature described here -- a direct mailing -- would be treated as a statutory "expenditure" by a party committee subject to §441a(d). While NRCC was not required to coordinate this

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expenditure with any potential candidate or candidates, it did so. Mr. Holmes' involvement with this expenditure, his consent to this expenditure, required him to abandon the pretense of testing the waters and to register as a candidate under the FECA with full disclosure obligations under the law. In failing to do so, Mr. Holmes violated the FECA.

2. The Poll

News reports also reflect the RNC's payment for a $15,000 (fifteen thousand dollar) poll designed to lay the foundation for Mr. Holmes' candidacy. (Exhibits D and E.) While these reports also incorporate statements by Mr. Holmes suggesting that this poll will only aid him in making a decision on candidacy, the circumstances indicate otherwise.

As stated, all of the activities described in this Complaint must be taken together, as one concerted and coordinated program to promote Mr. Holmes' candidacy prior to formal declaration -- and undermine the candidacy of his expected opponent, incumbent Congressman St Germain. These activities include the television advertisements, the mailing and the poll, all of which are critical elements to a full fledged campaign for nomination and election to federal office. Moreover, in all cases, funding for these purposes is being supplied by the National Republican Party by two of its affiliated committees, NRCC and RNC. The legal significance of RNC's payment of the poll for Mr. Holmes cannot be divorced from this context.

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On these grounds, while the direct mailing alone represents an expenditure of funds sufficient to trigger Mr. Holmes' candidacy, the cost of this poll ($15,000) must be included within the total which is legally determinative for registration purposes.[2/]

IV. CONCLUSION

In 1984, DCCC brought to the Commission's attention the purposeful efforts of the NRCC to evade the limitations set by law on its expenditures to support Republican candidates in House campaigns. The Commission declined to address the matter before the election. In desperation, with Election Day only days away, DCCC sought relief from the federal courts, again to no avail: the Court would not force the agency's hand in these extraordinary "last-minute" circumstances. And, when the Commission finally took up DCCC's Complaint, the election had long passed, and the agency would and could offer no relief.

Finally, thrugh the Advisory Opinion process (Advisory Opinon 1985-14), DCCC managed to obtain some

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2/ Furthermore, RNC's expenditure of these funds must in context be treated as allocable to some limitation under the statute which is binding on national party organizations. RNC has the option of treating the cost of this poll as allocable to the §441a(h) contribution limitation ($17,500), reportable as a contribution in-kind; or it may include this amount within the overall "coordinated expenditure" limit available to the national committee under §441a(d). Some limit does, however, apply. See Section III. A. of this Complaint.

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clarification of of the law, and particularly $441a(d), as it applies to both the Democratic and Republican Parties, and no less to NRCC and RNC. Even this enforcement effort appears to have come to naught, as the national Republican Party is currently ignoring it altogether.

DCCC requires action on its Complaint now, not six months or one year from now. Any delay will render the party financing limitations of the law a "dead-letter" in 1986.

Respectfully submitted,

PERKINS COIE

Robert F. Bauer
Counsel, Democratic Congressional
Campaign Committee

1328B

DISTRICT OF COLUMBIA

Subscribed and sworn to before me this 20th day of December 1985.

Darlene F. Symms
Notary Public

My commission expires: 3/31/89

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TV ad takes aim at St Germain

REP. St GERMAIN
... 'Let's have a disclosure of how this ad was prepared and paid for.'

PROVIDENCE (UPI) — The National Republican Congressional Committee has started playing hardball with veteran Rep. Fernand St Germain.

The committee has produced a 30-second television commercial demanding the First District Democrat disclose his income tax returns. St Germain has been the target of a growing controversy over his financial background and how he accumulated some of his wealth.

Two of the three television stations in Rhode Island have agreed to air the unusual spots, which do not promote a Republican candidate. State GOP Chairman John Holmes is considered the most likely person to challenge St Germain at the polls next year.

The ad, which WJAR-TV, Channel 10, and WPRI, Channel 12, said they will air, says St Germain's behavior "seems unethical" and asks him to "come clean." The ad ends with a picture of a 1040 tax form and asks the congressman to "tell the truth."

WLNE, Channel 6, has refused to broadcast the spots.

St Germain issued a statement Monday condemning the commercial.

"Let's have a disclosure of how this ad was prepared and paid for," St Germain said. "Where did the money really come from? Fat cat bankers? Fat cat corporations? Fat cat Republicans?"

St Germain has been under fire since the Wall Street Journal reported that he became a millionaire by investing with firms and individuals that benefited from his actions as chairman of the influential House Banking Committee.

In addition, St Germain, who has held the First District seat for 24 years, has admitted that he may have to make a substantial settlement with the Internal Revenue Service because the government has disallowed some of his tax shelter investments.

NEWPORT NEWS 12/10/85

EXHIBIT A

Evening Times 12/10/85

Republicans offer TV commercial seeking St Germain tax returns

PROVIDENCE (AP) — Republicans have stepped up their attack on Democratic Rep. Fernand St Germain with a commercial set to air locally this week demanding he release his income-tax returns.

The commercial sponsored by the National Republican Congressional Committee uses a man-on-the-street format to attack St Germain for allegations he became rich with the help of people and institutions he dealt with as chairman of the House Banking Committee.

"What he's done may not be illegal. It seems unethical, but we won't know until he comes clean," says a woman in the commercial.

The commercial is part of a GOP campaign to keep pressure on St Germain — who has held the 1st District seat for 13 terms — even though the election is 11 months away and no Republicans have formally announced their planned opposition.

St Germain, who has repeatedly refused to release his tax forms, issued a statement accusing the Republicans of hiding behind the finance issue to play politics.

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RHODE ISLAND CITIZENS FOR ACCOUNTABILITY IN GOVERNMENT

Dear Taxpayer:

You may have heard that our Congressman, Fernand St Germain, has been accused of some very serious charges.

According to the *Wall Street Journal*, *The Providence Journal Bulletin*, and other respected newspapers, Congressman St Germain has amassed a multimillion dollar personal fortune by using his public position to help wealthy investors.

It's time to clear the air.

That's why Rhode Island Citizens for Accountability in Government are asking Congressman St Germain to disclose in detail his financial records and make available to the public his tax returns.

Unfortunately, St Germain has refused. And that's bad because the people of Rhode Island have a right to know if our Congressman is telling the truth.

We also have a right to know if St Germain is trying to hide something.

In past years, public officials of both political parties have given the public a complete financial accounting of themselves.

Some who come quickly to mind are Richard Israel when running for Attorney General, John Hawkins for U.S. Senate, Joseph Garrahy for Governor, Vincent Cianci, Jr. for Mayor of Providence, and incumbent Mayor, Joseph Paolino, Jr.

If they found this course suitable, why not Congressman St Germain?

Just at a time Rhode Island citizens are demanding our leaders be honest and above reproach, we cannot afford to have this dark cloud hanging over our heads.

There's only one solution: Congressman St Germain must come clean by fully disclosing his taxes and finances. To do otherwise would bring an end to our efforts to rid our government of corruption and those who seek personal gain.

That's why we—Rhode Island Citizens for Accountability in Government—urge you and other members of your household to sign the attached petition and mail it to us immediately.

The petition asks the U.S. House of Representatives' Ethics Committee to officially investigate these serious charges and further demands that St Germain publicly disclose his taxes and finances.

The people of Rhode Island deserve to know the truth. The time for answers is now.

Sincerely,

Sandra Winslow

Sandra Winslow, Chairperson

P.S. Please sign the petition and mail immediately.

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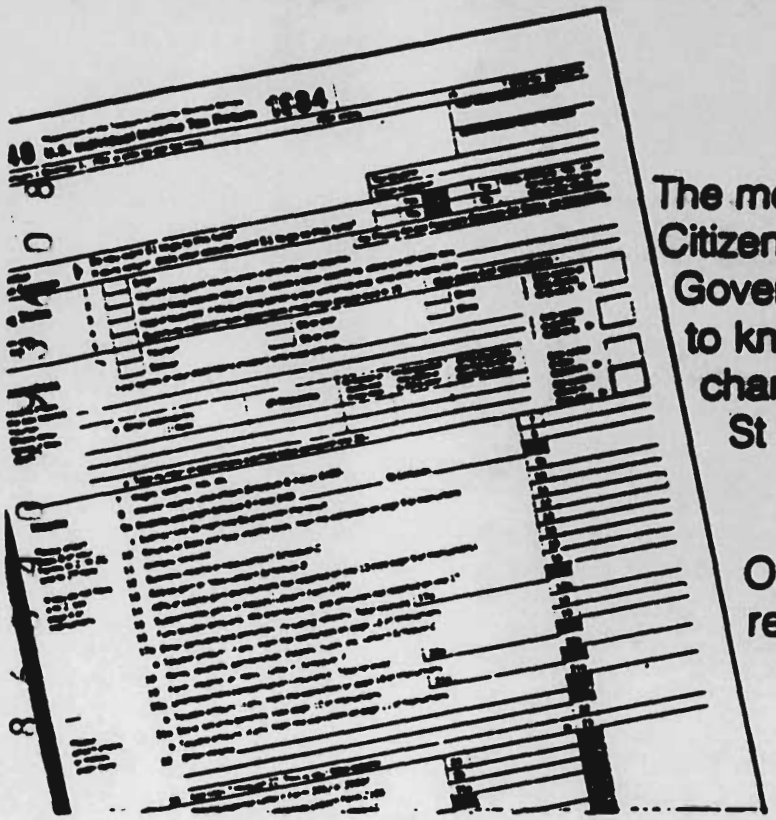
EXHIBIT B

Bulk Rate
U.S. Postage
PAID
Providence, R.I.
Permit #0123F

Rhode Island Citizens For
Accountability In Government
P.O. Box 28672
Providence, Rhode Island 02908

Tell us the *truth*, Congressman St Germain



The members of Rhode Island Citizens for Accountability in Government—a non-partisan group—want to know the truth about the financial charges made against Congressman St Germain.

Only you, Congressman, can set the record straight.

No Postage Necessary If Mailed In The United States

BUSINESS REPLY MAIL
First Class Permit No. 1408 Providence, R.I. 02908

Postage will be paid by Addressee

RHODE ISLAND CITIZENS FOR
ACCOUNTABILITY IN GOVERNMENT
P.O. BOX 28672
PROVIDENCE, RHODE ISLAND 02908-9990

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The petition asks the
investigate these serio
taxes and finances.

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EXHIBIT C

DEC. 14, 1985

THE PROVIDENCE JOURNAL-BULLETIN

GOP mailing on St Germain asks disclosure of tax returns

By M. CHARLES BAKST
Journal-Bulletin Political Writer

Constituents of Rep. Fernand J. St Germain are about to receive a mailing designed to pressure the Democrat into disclosing his tax returns. The mailing says it is sponsored by a "nonpartisan" citizen group, but it actually was executed and paid for by the National Republican Congressional Committee.

The NRCC is not mentioned. Douglas McAuliffe, an NRCC aide, said there was no requirement to do so: "I go by the letter of the law."

The headline on the front of the piece is "It's time to clear the air." The headline on the back, "Tell us the truth, Congressman St Germain," is the same as the tagline of a TV spot that the NRCC has been airing.

The mailing's nominal sponsor is "Rhode Island Citizens for Accountability in Government." It debuted last month with two founding members, both of whom are local GOP activists, and one of them said yesterday that it still has only two members.

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THE MAILING says St Germain has been accused of "some very serious charges." It cites newspaper reports that St Germain has built a "multimillion-dollar personal fortune by using his public position to help wealthy investors."

(St Germain acknowledges being a millionaire but denies any improprieties.)

The mailing demands that St Germain disclose his taxes and details of his holdings. It mentions several Rhode Island politicians who, it says, gave complete financial accountings in past campaigns.

The piece includes a response card urging the House Ethics Committee to investigate St Germain.

The mailing is go out this weekend to 43,000 to 45,000 households in clusters in the First District, which has about 186,000 households.

Cost of the project, including printing and a bulk postal rate, will be about $10,000.

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MEANWHILE, Common Cause has renewed its demand that the Ethics Committee investigate St Germain, House banking chairman.

Common Cause's national office yesterday provided the text of a letter that Fred Wertheimer, president, sent to Rep. Julian Dixon, D-Calif, chairman of the Ethics Committee on Thursday. It expressed "serious concern" that the committee has not said publicly whether it will investigate St Germain. Common Cause first requested an investigation after *The Wall Street Journal* said in September that St Germain had become a millionaire with the help of people and institutions that have been aided by his official actions.

No Ethics Committee spokesman could be reached for comment yesterday. There have been unconfirmed reports that the panel has launched a preliminary inquiry into St Germain. The panel's actions are traditionally shrouded in secrecy.

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AS FOR THE MAILING, McAuliffe of the NRCC said the piece was sketched out here by the citizen group, which consists of Sandra Winslow, a secretary in the House minority office in the State House, and Thomas J. Cashill, a close friend of Republican state Chairman John A. Holmes Jr., who is expected to be the GOP First District nominee.

McAuliffe said the NRCC and its contractors polished the piece and handled its printing and mailing.

As for why he would not be proud to have the NRCC identified, he said, "It's Rhode Island Citizens for Accountability that should be proud (of the mailing)."

Mrs. Winslow said she did not notice the absence of the NRCC name until a reporter brought it to her attention. She said that even though her group's financing comes from the NRCC, it is justified in calling itself nonpartisan because it was not founded as a partisan organization.

McAuliffe said that with no GOP declared candidate in the race and with the TV and mail efforts not advocating anyone's election or defeat, the NRCC's expenditures to date (as much as $15,000 for television, in addition to the $10,000 mailing) will not count against the $72,000 limit for aid the national Republican Party can give the nominee.

Common Cause renews demand for House probe of congressman

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EXHIBIT D

GOP Commissions Poll to Learn If Holmes Can Unseat St Germain

PROVIDENCE (AP) — The Republican National Committee will pay for a poll to determine if GOP state chairman John A. Holmes Jr. has a chance to unseat Rep. Fernand St Germain.

Holmes said Friday the 40-question survey next week of First Congressional District voters will cost $15,000. It will be conducted by Decision Making Information of McLean, Va., a firm owned by Richard Wirthlin, President Reagan's pollster.

Holmes, appearing on WJAR-TV's "10 News Conference," said he will run if the voters agree with his perception that St Germain is out of touch with the state.

"I think he's got one interest, and one interest only, and that's the banking community," Holmes said. "I don't know what that is doing for the people who live in Woonsocket, Pawtucket and Central Falls." St Germain is chairman of the House Banking Committee.

The GOP chairman said Joe Scanlon, St Germain's longtime aide, does most of the Democrat's work.

Holmes said he thinks St Germain could raise a $1.5 million campaign fund. But Holmes said he could wage a competitive challenge with about $500,000.

On a state government matter, Holmes said Gov. Edward D. DiPrete could have escaped some criticism by hiring and appointing fewer people from his home city of Cranston.

But Holmes said DiPrete is getting the job done and "that's what it's all about."

GOP head Holmes finances poll on race vs. St Germain

PROVIDENCE (AP) — The Republican National Committee will pay for a poll to determine if GOP state chairman John A. Holmes Jr. has a chance to unseat Rep. Fernand St Germain.

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But Holmes said DiPrete is getting the job done and "that's what it's all about."

Pawt Times 8/5/85

EXHIBIT E

GOP chief Holmes says poll will help him decide about facing St Germain

Chairman calls congressman 'out of step' with country

By M. CHARLES BAKST
Journal-Bulletin Political Writer

PROVIDENCE — Republican state chairman John A. Holmes Jr. said yesterday that the GOP National Committee will underwrite a poll this week to help him decide whether to run against Rep. Fernand J. St Germain next year.

Holmes said the 40-question telephone survey, to start Monday and end Friday, will cost $15,000. It will be done by Decision Making Information, the McLean, Va., firm of Richard Wirthlin, President Reagan's pollster.

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DURING TAPING of Channel 10's "10 News Conference," to air tomorrow, Holmes said that to persuade him to run, the poll results would need to demonstrate that First Congressional District residents share his view of Democrat St Germain, the chairman of the House Banking Committee.

Holmes said:

"I think that Congressman St Germain is so far out of step with the direction of this country, and more specifically the state and the district, of anybody else in the United States Congress. I think he's got one interest, and one interest only, and that's the banking community, and I don't know what that is doing for the people who live in Woonsocket, Pawtucket and Central Falls. I don't know what that's doing for jobs in the First Congressional District."

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"THANK GOD for Joe Scanlon," Holmes said, referring to St Germain's longtime aide. "He has got to be one of the finest chief of staffs that any political person has. I think Joe Scanlon is the congressman in the First Congressional District. He's the one that you see all the time. You very seldom see Fred St Germain coming back to the state."

Holmes maintained that St Germain clings to an outdated view that big government is the answer to everything. Holmes was pleased to note that Woonsocket — the congressman's home — the district and the state all voted for Mr. Reagan.

The banking community is a major source of St Germain's campaign financing. Holmes said he is sure that St Germain could easily build a war chest of $1.5 million, which he could not match. But he said he could mount a winning campaign for $500,000.

On another matter, Holmes was asked about Democratic criticism that so many of Governor DiPrete's appointees have come from Cranston, where DiPrete was mayor. Holmes said he has often kidded the governor, asking him "if he felt Rhode Island was bordered on the north, south, east and west by Cranston."

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HOLMES SAID that, as GOP chairman, "I would have wished that Governor DiPrete would have sort of spread some of those jobs around." Holmes said it would have cut down on complaints he receives daily from Republicans from other communities. But he said DiPrete wanted to hire people he knew or had worked with, that the governor feels "comfortable" about it, and that people believe Rhode Island is moving in the right direction under DiPrete.

Holmes said, "If he wants to continue to hire people from Cranston, so be it. The job is getting done, and that's what it's all about."

Holmes also said he is urging people to run for the 1986 Constitutional Convention, which, by law, will be nonpartisan. He said he is doing this more as a civic gesture than as a partisan recruitment effort.

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EXHIBIT F

10/30/85 THE PROVIDENCE SUNDAY JOURNAL

NRCC provides clipping service on St Germain for House, gratis

By M. CHARLES BAKER
Journal-Bulletin Political Writer

PROVIDENCE — The National Republican Congressional Committee, which is trying to unseat Rep. Fernand J. St Germain for defeat in 1986, has sent every House member a package of newspaper clippings about the financial controversies swirling around the Rhode Island Democrat.

Douglas McAuliffe, field representative, Thursday offered this explanation: the NRCC is out to get St Germain and wants to create media for him among his colleagues and on the campaign trail.

"Any time we have a chance to do something, we're going to do it," McAuliffe said in a telephone interview from Washington.

St Germain's comment on the mailing, said Joseph Sessler, his top aide, was, "It's politics."

Most of the clippings relate either to last month's *Wall Street Journal* report that St Germain has become a millionaire with help from people and institutions that have gained from his official actions — by denies any impropriety — or to follow-ups regarding an investigation of the congressman that the House Ethics Committee reportedly has launched.

But some of the clippings, from the *Journal-Bulletin* and the *Evening Times* of Pawtucket, go back to a 1978 flap about the congressman receiving illegal campaign help from the Portland Corp.

(Eventually, the company, admitting that its employees in 1978 distributed literature during regular working hours that urged the re-election of St Germain, paid the Federal Election Commission a $100 civil penalty. The FEC cleared St Germain of any wrongdoing.)

As for why stories about the Portland incident were included, McAuliffe said it was to demonstrate a further link between St Germain and developer Roland Parland. The *Wall Street Journal* detailed a close relationship, both in politics and in investments, between St Germain and Parland.

The package of clippings was sent to congressmen with a covering letter from Joseph R. Gaylord, NRCC executive director, outlining the St Germain-*Wall Street Journal* situation, mentioning that the *Providence Journal* and *Washington Post* have editorialized on the subject, and noting that Common Cause has sought an ethics panel probe. The articles were being enclosed, Gaylord wrote, for "your further review and interest."

McAuliffe, who is responsible for overseeing 100 House races in the Northeast, said Rhode Island's First District is one of 10 on which he is concentrating. "My job is to do whatever I can to get Republicans elected to Congress, and I choose vulnerable seats and I think Freddy St Germain is more vulnerable than many people realize," he said.

Among people he works with are Burlington's Thomas J. Cashill, who heads a committee monitoring St Germain and paving the way for Republican challengers. Cashill is a close friend of GOP State chairman John A. Holmes Jr., who is gearing up to run against St Germain.

McAuliffe said the home went to all congressmen because "we're trying to make all the members aware there allegations exist. Freddy St Germain probably has a reputation there of being a strong, self-serving Democratic chairman, and I think it's enough to file at least 182 Republicans in the House and probably a number of Democrats, conservative Democrats."

Financial/political controversy, combined with an ethics probe, eventually could weaken St Germain's stature among his colleagues, McAuliffe said. He said this could affect the congressman's ability to make legislative deals and could result in House members from around the country showing more interest in defeating him.

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GCC 9280

MUR 2116 Brown

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

85 DEC 26 P 2:33

PERKINS COIE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1110 VERMONT AVENUE, N.W. • WASHINGTON, D.C. 20005 • (202) 887-9030

ROBERT F. BAUER

December 23, 1985

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

Gentlemen:

On Friday, December 20, 1985, this office filed a Complaint on behalf of the Democratic Congressional Campaign Committee, against the National Republican Congressional Committee, John A. Holmes, Jr., and others.

Please be advised that for communications purposes, the name and telephone number of the Complainant's counsel is:

Robert F. Bauer, Esq.
Perkins Coie
1110 Vermont Avenue, N.W.
Suite 1200
Washington, D.C. 20005

(202) 887-9030.

Thank you for your attention to this matter.

Very truly yours,

Robert F. Bauer

RFB/lff

TELEX: 44-0277 PCSO UI • FACSIMILE (GP I, II, III): (202) 223-2088
OTHER OFFICES: ANCHORAGE, ALASKA • BELLEVUE, WASHINGTON • PORTLAND, OREGON • SEATTLE, WASHINGTON

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OFFICE OF THE
GENERAL COUNSEL

PERKINS COIE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1110 VERMONT AVENUE, N.W. • WASHINGTON, D.C. 20005 • (202) 887-9030

2116

85 DEC 26 P2:33

ROBERT F. BAUER

December 23, 1985

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

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COMPLAINT

BEFORE THE

FEDERAL ELECTION COMMISSION

I. INTRODUCTION

The Democratic Congressional Campaign Committee ("DCCC") files this complaint challenging numerous and significant violations of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431 et seq. ("FECA"), and related regulations of the Federal Election Commission, by the National Republican Congressional Committee ("NRCC"); the Republican National Committee ("RNC"); Mr. John A. Holmes, Jr., a candidate for nomination for election to the House of Representatives from the First District of Rhode Island; and other individuals and organizations whose identities may be revealed in connection with a full investigation by the Commission ("Respondents").

II. FACTS

DCCC attaches, for the review of the General Counsel, a series of clippings from various news organizations reporting on recent activities of Respondents. These Respondents seek the defeat in the 1986 general election of the First District incumbent Congressman Fernand St Germain and the election of Republican John A. Holmes, Jr. To this end, Respondents NRCC and RNC, in particular, are expending substantial funds, apparently in excess of $40,000 (forty thousand dollars).

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OFFICE OF THE
GENERAL COUNSEL

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These funds have been spent in a coordinated effort though mass media and mailings to promote the candidacy of Mr. Holmes and to undermine the candidacy of Congressman St Germain. The components of this coordinated program are as follows:

1. Fifteen thousand dollars ($15,000) in television advertisements prepared and paid for by NRCC, and broadcast within and directed to the First District, which assail the personal finances and conduct in office of Congressman St Germain. (Exhibit A.)

2. Ten thousand dollars ($10,000) in "companion" mailings on the same political theme, also directed to the Congressman's constituents, which are paid for by NRCC but which bear only the name of a sham organization, "Rhode Island Citizens for Accountability in Government." (Exhibits B and C.)

3. At least fifteen thousand dollars ($15,000) in polling by RNC to lay the foundation for the campaign for John Holmes for nomination and election to the First District Rhode Island seat now held by Congressman St Germain. (Exhibits D and E.)

All of these activities have been financed in coordination and cooperation with Mr. Holmes and his closest political associates.

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III. VIOLATIONS OF LAW

A. NRCC Evasion of §441a(d) Limits in Connection With "Direct" Mailing Attacking the Record of Mr. St Germaine

Commission Advisory Opinion 1985-14, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5819 (May 30, 1985), is dispositive on this issue. Direct mailings of this nature, even if framed without an explicit "electioneering" message, are subject in full to the limits which apply to a party's support of its general election candidates. See also 2 U.S.C. §441a(d).

NRCC apparently does not intend to comply with these limits. In the news article marked Exhibit F, an NRCC "field representative" is either unaware of or indifferent to the Commission's holding in Advisory Opinion 1985-14. This NRCC official contends that the apparent absence from the mailing of both a formally declared Republican candidate and of an explicit "electioneering" statement obviates the need for an allocation to the limits. Advisory Opinion 1985-14 demonstrates that this is a false, likely a wilfully false, reading of the law and of the Commission's position on the law.

B. NRCC Violation of "Disclaimer" Requirements

NRCC's mailing has been prepared without any reference to a conceded fact: NRCC paid for this mailing in full, including NRCC staff time in "polishing" (Exhibit C) the written text and handling the mechanical requirements for mailing.

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Apparently because NRCC intended to conceal its involvement, perhaps as part of a strategy to avoid §441a(d) limitation issues, NRCC did not add a "disclaimer" identifying its sponsorship in accordance with 2 U.S.C. §441d. NRCC did add such a disclaimer to its television advertisements on this same subject over the same period -- but such a disclaimer is a condition precedent to acceptance for broadcast under the Federal Communications Act. 47 U.S.C. §317. NRCC, however, had reasons to disregard the similar FECA requirement as it applied to its mailing.

As a result, NRCC's involvement in this mailing was disclosed only to those of its recipients who came upon news disclosure of that involvement. The mailing itself had the name of the "Rhode Island Citizens" group -- and no reference at all to NRCC.[1/]

Section 441d was thereby wilfully and wholly violated.

C. Failure of John A. Holmes, Jr. to Register as a "Candidate" Under the FECA

News reports clearly demonstrate that all of the activities described in this Complaint reflect a coordinated and concerted effort by Respondents to promote the nomination and election of John A. Holmes, Jr., to replace the incumbent

---

1/ The organization surfaced the month before the mailing, "with two founding members," and it apparently has only those two members today. (Exhibit C.) No article or other report suggests that this "organizaton" was meant to do more than "monitoring St Germain and paving the way for Republican challengers." (Exhibit F.)

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Democratic Member of Congress from the First District of Rhode Island. Because of the nature of these activities, including their clear coordination with Mr. Holmes and his closest associates, the expenditures associated with these activities have exceeded the threshold requirements for the formal registration of Mr. Holmes' candidacy under the FECA. 2 U.S.C. §431(2). Conversely, none of these actions, taken alone or in context, can properly be qualified as expenditures for "testing the waters" which would otherwise be available as a basis for avoiding registration at this time.

1. The Mailing

The direct mailing funded by NRCC, and described fully elsewhere in this Complaint, constitutes an allocable expenditure subject to the limitations which apply to NRCC's spending on behalf of its First District general election candidate under §441a(d). See p. 3 of this Complaint. Moreover, the making of this expenditure was coordinated closely with Mr. Holmes, through one of his close political associates who participated in the establishment of NRCC's "front" organization, Rhode Island Citizens for Accountability in Government. Specifically, news reports (Exhibits C and E) indicate the involvement in this scheme of Mr. Thomas J. Cashill, described as a "close friend of Republican State Chairman John A. Holmes, Jr., who is expected to be the GOP First District nominee." (Exhibit C.) A Commission investigation pursuant to this Complaint will reveal, as these

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news reports demonstrate, that Mr. Holmes was fully involved with and consented to the preparation and dissemination of this mailing. As NRCC, the financier of this mailing, has admitted that the mailing cost no less than $10,000, there is no question that the monies expended for this purpose with Mr. Holmes' consent exceeded the $5,000 threshold upon which FECA candidacy is based.

There is, moreover, no basis under the law for Mr. Holmes to allege that his activities constituted solely "testing the waters." Under testing the water regulations, only recently revised and reissued by the Commission, testing the waters activities cannot be conducted through direct political advertising clearly designed to promote the candidacy of the individual involved in those activities. 11 C.F.R. §100.7(b)(1)(ii) (testing the waters exemption "does not apply to funds received for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign.") See also FEC Advisory Opinion 1982-32, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5620 (October 2, 1981).

In Advisory Opinion 1985-14, the Commission held specifically that public political advertising of the nature described here -- a direct mailing -- would be treated as a statutory "expenditure" by a party committee subject to §441a(d). While NRCC was not required to coordinate this

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expenditure with any potential candidate or candidates, it did so. Mr. Holmes' involvement with this expenditure, his consent to this expenditure, required him to abandon the pretense of testing the waters and to register as a candidate under the FECA with full disclosure obligations under the law. In failing to do so, Mr. Holmes violated the FECA.

2. The Poll

News reports also reflect the RNC's payment for a $15,000 (fifteen thousand dollar) poll designed to lay the foundation for Mr. Holmes' candidacy. (Exhibits D and E.) While these reports also incorporate statements by Mr. Holmes suggesting that this poll will only aid him in making a decision on candidacy, the circumstances indicate otherwise.

As stated, all of the activities described in this Complaint must be taken together, as one concerted and coordinated program to promote Mr. Holmes' candidacy prior to formal declaration -- and undermine the candidacy of his expected opponent, incumbent Congressman St Germain. These activities include the television advertisements, the mailing and the poll, all of which are critical elements to a full fledged campaign for nomination and election to federal office. Moreover, in all cases, funding for these purposes is being supplied by the National Republican Party by two of its affiliated committees, NRCC and RNC. The legal significance of RNC's payment of the poll for Mr. Holmes cannot be divorced from this context.

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On these grounds, while the direct mailing alone represents an expenditure of funds sufficient to trigger Mr. Holmes' candidacy, the cost of this poll ($15,000) must be included within the total which is legally determinative for registration purposes.[2/]

IV. CONCLUSION

In 1984, DCCC brought to the Commission's attention the purposeful efforts of the NRCC to evade the limitations set by law on its expenditures to support Republican candidates in House campaigns. The Commission declined to address the matter before the election. In desperation, with Election Day only days away, DCCC sought relief from the federal courts, again to no avail: the Court would not force the agency's hand in these extraordinary "last-minute" circumstances. And, when the Commission finally took up DCCC's Complaint, the election had long passed, and the agency would and could offer no relief.

Finally, thrugh the Advisory Opinion process (Advisory Opinon 1985-14), DCCC managed to obtain some

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2/ Furthermore, RNC's expenditure of these funds must in context be treated as allocable to some limitation under the statute which is binding on national party organizations. RNC has the option of treating the cost of this poll as allocable to the §441a(h) contribution limitation ($17,500), reportable as a contribution in-kind; or it may include this amount within the overall "coordinated expenditure" limit available to the national committee under §441a(d). Some limit does, however, apply. See Section III. A. of this Complaint.

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clarification of of the law, and particularly §441a(d), as it applies to both the Democratic and Republican Parties, and no less to NRCC and RNC. Even this enforcement effort appears to have come to naught, as the national Republican Party is currently ignoring it altogether.

DCCC requires action on its Complaint now, not six months or one year from now. Any delay will render the party financing limitations of the law a "dead-letter" in 1986.

Respectfully submitted,

PERKINS COIE

Robert F. Bauer
Counsel, Democratic Congressional
Campaign Committee

1328B

DISTRICT OF COLUMBIA

Subscribed and sworn to before me this 20th day of December 1985.

Notary Public

My commission expires: 3/31/89

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1328B

DISTRICT OF COLUMBIA

Subscribed and sworn to before me this 20th day of December 1985.

Notary Public

My commission expires: 3/31/89

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TV ad takes aim at St Germain

REP. St GERMAIN
... 'Let's have a disclosure of how this ad was prepared and paid for.'

PROVIDENCE (UPI) — The National Republican Congressional Committee has started playing hardball with veteran Rep. Fernand St Germain.

The committee has produced a 30-second television commercial demanding the First District Democrat disclose his income tax returns. St Germain has been the target of a growing controversy over his financial background and how he accumulated some of his wealth.

Two of the three television stations in Rhode Island have agreed to air the unusual spots, which do not promote a Republican candidate. State GOP Chairman John Holmes is considered the most likely person to challenge St Germain at the polls next year.

The ad, which WJAR-TV, Channel 10, and WPRI, Channel 12, said they will air, says St Germain's behavior "seems unethical" and asks him to "come clean." The ad ends with a picture of a 1040 tax form and asks the congressman to "tell the truth."

WLNE, Channel 6, has refused to broadcast the spots.

St Germain issued a statement Monday condemning the commercial.

"Let's have a disclosure of how this ad was prepared and paid for," St Germain said. "Where did the money really come from? Fat cat bankers? Fat cat corporations? Fat cat Republicans?"

St Germain has been under fire since the Wall Street Journal reported that he became a millionaire by investing with firms and individuals that benefited from his actions as chairman of the influential House Banking Committee.

In addition, St Germain, who has held the First District seat for 24 years, has admitted that he may have to make a substantial settlement with the Internal Revenue Service because the government has disallowed some of his tax shelter investments.

NEWPORT NEWS
12/10/85

EXHIBIT A

Evening Times 12/10/85

Republicans offer TV commercial seeking St Germain tax returns

PROVIDENCE (AP) — Republicans have stepped up their attack on Democratic Rep. Fernand St Germain with a commercial set to air locally this week demanding he release his income-tax returns.

The commercial sponsored by the National Republican Congressional Committee uses a man-on-the-street format to attack St Germain for allegations he became rich with the help of people and institutions he dealt with as chairman of the House Banking Committee.

"What he's done may not be illegal. It seems unethical, but we won't know until he comes clean," says a woman in the commercial.

The commercial is part of a GOP campaign to keep pressure on St Germain — who has held the 1st District seat for 13 terms — even though the election is 11 months away and no Republicans have formally announced their planned opposition.

St Germain, who has repeatedly refused to release his tax forms, issued a statement accusing the Republicans of hiding behind the finance issue to play politics.

RHODE ISLAND CITIZENS FOR ACCOUNTABILITY IN GOVERNMENT

Dear Taxpayer:

You may have heard that our Congressman, Fernand St Germain, has been accused of some very serious charges.

According to the *Wall Street Journal*, *The Providence Journal Bulletin*, and other respected newspapers, Congressman St Germain has amassed a multimillion dollar personal fortune by using his public position to help wealthy investors.

It's time to clear the air.

That's why Rhode Island Citizens for Accountability in Government are asking Congressman St Germain to disclose in detail his financial records and make available to the public his tax returns.

Unfortunately, St Germain has refused. And that's bad because the people of Rhode Island have a right to know if our Congressman is telling the truth.

We also have a right to know if St Germain is trying to hide something.

In past years, public officials of both political parties have given the public a complete financial accounting of themselves.

Some who come quickly to mind are Richard Israel when running for Attorney General, John Hawkins for U.S. Senate, Joseph Garrahy for Governor, Vincent Cianci, Jr. for Mayor of Providence, and incumbent Mayor, Joseph Paolino, Jr.

If they found this course suitable, why not Congressman St Germain?

Just at a time Rhode Island citizens are demanding our leaders be honest and above reproach, we cannot afford to have this dark cloud hanging over our heads.

There's only one solution: Congressman St Germain must come clean by fully disclosing his taxes and finances. To do otherwise would bring an end to our efforts to rid our government of corruption and those who seek personal gain.

That's why we—Rhode Island Citizens for Accountability in Government—urge you and other members of your household to sign the attached petition and mail it to us immediately.

The petition asks the U.S. House of Representatives' Ethics Committee to officially investigate these serious charges and further demands that St Germain publicly disclose his taxes and finances.

The people of Rhode Island deserve to know the truth. The time for answers is now.

Sincerely,

Sandra Winslow

Sandra Winslow, Chairperson

P.S. Please sign the petition and mail immediately.

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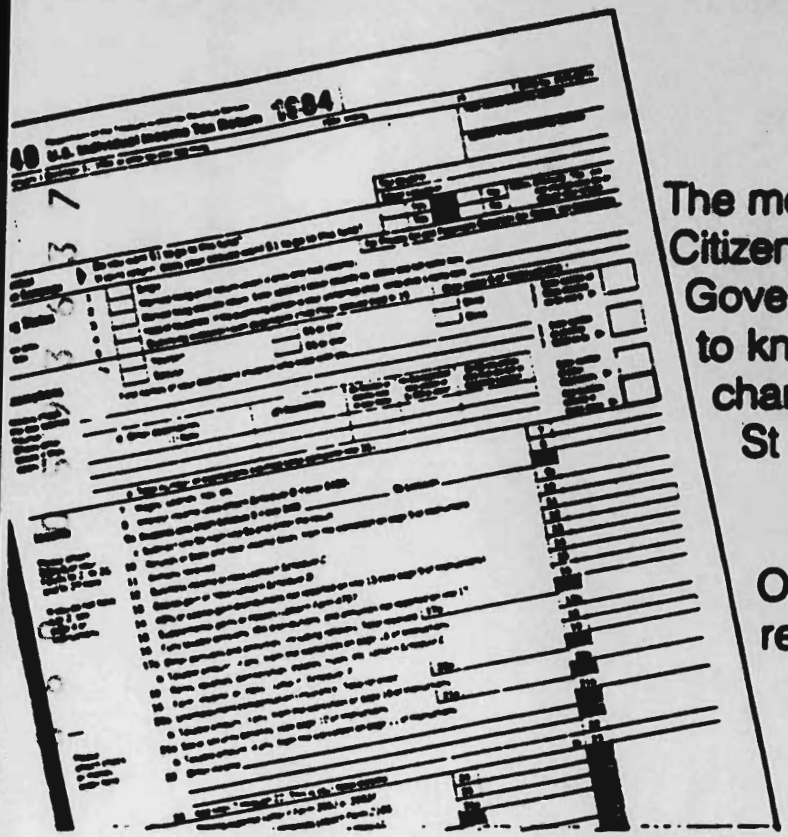
EXHIBIT B

Rhode Island Citizens For
Accountability in Government
P.O. Box 28672
Providence, Rhode Island 02908

Bulk Rate
U.S. Postage
PAID
Providence, R.I.
Permit 501297

Tell us the *truth*, Congressman St Germain



The members of Rhode Island Citizens for Accountability in Government—a non-partisan group—want to know the truth about the financial charges made against Congressman St Germain.

Only you, Congressman, can set the record straight.

No Postage Necessary If Mailed In The United States

BUSINESS REPLY MAIL
First Class Permit No. 1408 Providence, R.I. 02908

Postage will be paid by Addressee

RHODE ISLAND CITIZENS FOR ACCOUNTABILITY IN GOVERNMENT
P.O. BOX 28672
PROVIDENCE, RHODE ISLAND 02908-9990

RHODE ISLAND CITIZENS FOR ACCOUNTABILITY IN GOVERNMENT

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Some who come quickly to mind are Richard Israel when running for Attorney General, John Hawkins for U.S. Senate, Joseph Garrahy for Governor, Vincent Cianci, Jr. for Mayor of Providence, and incumbent Mayor, Joseph Paolino, Jr.

If they found this course suitable, why not Congressman St Germain?

Just at a time Rhode Island citizens are demanding our leaders be honest and above reproach, we cannot afford to have this dark cloud hanging over our heads.

There's only one solution: Congressman St Germain must come clean by fully disclosing his taxes and finances. To do otherwise would bring an end to our efforts to rid our government of corruption and those who seek personal gain.

That's why we—Rhode Island Citizens for Accountability in Government—urge you and other members of your household to sign the attached petition and mail it to us immediately.

The petition asks the
investigate these serio
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EXHIBIT C

DEC. 14, 1985

THE PROVIDENCE JOURNAL-BULLETIN

GOP mailing on St Germain asks disclosure of tax returns

By M. CHARLES BAKST
Journal-Bulletin Political Writer

Constituents of Rep. Fernand J. St Germain are about to receive a mailing designed to pressure the Democrat into disclosing his tax returns. The mailing says it is sponsored by a "nonpartisan" citizen group, but it actually was executed and paid for by the National Republican Congressional Committee.

The NRCC is not mentioned. Douglas McAuliffe, an NRCC aide, said there was no requirement to do so: "I go by the letter of the law."

The headline on the front of the piece is "It's time to clear the air." The headline on the back, "Tell us the *truth*, Congressman St Germain," is the same as the tagline of a TV spot that the NRCC has been airing.

The mailing's nominal sponsor is "Rhode Island Citizens for Accountability in Government." It debuted last month with two founding members, both of whom are local GOP activists, and one of them said yesterday that it still has only two members.

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THE MAILING says St Germain has been accused of "some very serious charges." It cites newspaper reports that St Germain has built a "multimillion-dollar personal fortune by using his public position to help wealthy investors."

(St Germain acknowledges being a millionaire but denies any improprieties.)

The mailing demands that St Germain disclose his taxes and details of his holdings. It mentions several Rhode Island politicians who, it says, gave complete financial accountings in past campaigns.

The piece includes a response card urging the House Ethics Committee to investigate St Germain.

The mailing is go out this weekend to 43,000 to 45,000 households in clusters in the First District, which has about 186,000 households.

Cost of the project, including printing and a bulk postal rate, will be about $10,000.

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Common Cause renews demand for House probe of congressman

MEANWHILE, Common Cause has renewed its demand that the Ethics Committee investigate St Germain, House banking chairman.

Common Cause's national office yesterday provided the text of a letter that Fred Wertheimer, president, sent to Rep. Julian Dixon, D-Calif, chairman of the Ethics Committee on Thursday. It expressed "serious concern" that the committee has not said publicly whether it will investigate St Germain. Common Cause first requested an investigation after *The Wall Street Journal* said in September that St Germain had become a millionaire with the help of people and institutions that have been aided by his official actions.

No Ethics Committee spokesman could be reached for comment yesterday. There have been unconfirmed reports that the panel has launched a preliminary inquiry into St Germain. The panel's actions are traditionally shrouded in secrecy.

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AS FOR THE MAILING, McAuliffe of the NRCC said the piece was sketched out here by the citizen group, which consists of Sandra Winslow, a secretary in the House minority office in the State House, and Thomas J. Cahill, a close friend of Republican state Chairman John A. Holmes Jr., who is expected to be the GOP First District nominee.

McAuliffe said the NRCC and its contractors polished the piece and handled its printing and mailing.

As for why he would not be proud to have the NRCC identified, he said, "It's Rhode Island Citizens for Accountability that should be proud (of the mailing)."

Mrs. Winslow said she did not notice the absence of the NRCC name until a reporter brought it to her attention. She said that even though her group's financing comes from the NRCC, it is justified in calling itself nonpartisan because it was not founded as a partisan organization.

McAuliffe said that with no GOP declared candidate in the race and with the TV and mail efforts not advocating anyone's election or defeat, the NRCC's expenditures to date (as much as $15,000 for television, in addition to the $10,000 mailing) will not count against the $72,000 limit for aid the national Republican Party can give the nominee.

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Holmes, appearing on WJAR-TV's "10 News Conference," said he will run if the voters agree with his perception that St Germain is out of touch with the state.

"I think he's got one interest, and one interest only, and that's the banking community," Holmes said. "I don't know what that is doing for the people who live in Woonsocket, Pawtucket and Central Falls." St Germain is chairman of the House Banking Committee.

The GOP chairman said Joe Scanlon, St Germain's longtime aide, does most of the Democrat's work.

Holmes said he thinks St Germain could raise a $1.5 million campaign fund. But Holmes said he could wage a competitive challenge with about $500,000.

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8/5/85

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EXHIBIT E

GOP chief Holmes says poll will help him decide about facing St Germain

Chairman calls congressman 'out of step' with country

By M. CHARLES BAKST
Journal-Bulletin Political Writer

PROVIDENCE — Republican state chairman John A. Holmes Jr. said yesterday that the GOP National Committee will underwrite a poll this week to help him decide whether to run against Rep. Fernand J. St Germain next year.

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Holmes said:

"I think that Congressman St Germain is so far out of step with the direction of this country, and more specifically the state and the district, of anybody else in the United States Congress. I think he's got one interest, and one interest only, and that's the banking community, and I don't know what that is doing for the people who live in Woonsocket, Pawtucket and Central Falls. I don't know what that's doing for jobs in the First Congressional District."

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"THANK GOD for Joe Semonin," Holmes said, referring to St Germain's longtime aide. "He has got to be one of the finest chief of staffs that any political person has. I think Joe Semonin is the congressman in the First Congressional District. He's the one that you see all the time. You very seldom see Fred St Germain coming back to the state."

Holmes maintained that St Germain clings to an outdated view that big government is the answer to everything. Holmes was pleased to note that Woonsocket — the congressman's home — the district and the state all voted for Mr. Reagan.

The banking community is a major source of St Germain's campaign financing. Holmes said he is sure that St Germain could easily build a war chest of $1.5 million, which he could not match. But he said he could mount a winning campaign for $500,000.

On another matter, Holmes was asked about Democratic criticism that so many of Governor DiPrete's appointees have come from Cranston, where DiPrete was mayor. Holmes said he has often kidded the governor, asking him "if he felt Rhode Island was bordered on the north, south, east and west by Cranston."

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HOLMES SAID that, as GOP chairman, "I would have wished that Governor DiPrete would have sort of spread some of those jobs around." Holmes said it would have cut down on complaints he receives daily from Republicans from other communities. But he said DiPrete wanted to hire people he knew or had worked with, that the governor feels "comfortable" about it, and that people believe Rhode Island is moving in the right direction under DiPrete.

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PJ 8/3/85

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EXHIBIT F

10/20/85 THE PROVIDENCE SUNDAY JOURNAL

NRCC provides clipping service on St Germain for House, gratis

By M. CHARLES BAKER
Journal-Bulletin Political Writer

PROVIDENCE — The National Republican Congressional Committee, which is trying to oust Rep. Fernand J. St Germain for indict in 1986, has sent every House member a package of newspaper clippings about the financial controversies swirling around the Rhode Island Democrat.

Douglas McAuliffe, field representative, Thursday offered this explanation: the NRCC is out to get St Germain and wants to create credit for him among his colleagues and on the campaign trail.

"Any time we have a chance to do something, we're going to do it," McAuliffe said in a telephone interview from Washington.

St Germain's comment on the mailing, said Joseph Sanzio, his top aide, was, "It's politics."

Most of the clippings relate either to last month's *Wall Street Journal* report that St Germain has become a millionaire with help from people and institutions that have joined from his official actions — he denies any impropriety — or to follow-ups regarding an investigation of the congressman that the House Ethics Committee reportedly has launched.

But some of the clippings, from the *Journal-Bulletin* and the *Evening Times* of Pawtucket, go back to a 1976 *Sun* story about the congressman receiving illegal campaign help from the Parland Corp.

(Eventually, the company, admitting that its employees in 1976 distributed literature during regular working hours that urged the re-election of St Germain, paid the Federal Election Commission a $100 civil penalty. The FEC cleared St Germain of any wrongdoing.)

As for why stories about the Parland incident were included, McAuliffe said it was to demonstrate a further link between St Germain and developer Roland Parland. The *Wall Street Journal* detailed a close relationship, both in politics and in investments, between St Germain and Parland.

The package of clippings was sent to congressmen with a covering letter from Joseph R. Gaylord, NRCC executive director, outlining the St Germain-*Wall Street Journal* situation, mentioning that the Providence *Journal* and Washington *Post* have editorialized on the subject, and noting that Common Cause has sought an ethics panel probe. The articles were being enclosed, Gaylord wrote, for "your further review and interest."

McAuliffe, who is responsible for overseeing 100 House races in the Northeast, said Rhode Island's First District is one of 10 on which he is concentrating. "My job is to do whatever I can to get Republicans elected to Congress, and I choose vulnerable seats and I think Freddy St Germain is more vulnerable than many people realize," he said.

Among people he works with are Barrington's Thomas J. Cashill, who heads a committee monitoring St Germain and paving the way for Republican challengers. Cashill is a close friend of GOP state chairman John A. Holmes Jr., who is gearing up to run against St Germain.

McAuliffe said the items went to all congressmen because "we're trying to make all the members aware these allegations exist. Freddy St Germain probably has a reputation there of being a strong, self-serving Democratic chairman, and I think it's enough to rile at least 182 Republicans in the House and probably a number of Democrats, conservative Democrats."

Financial/political controversy, combined with an ethics probe, eventually could weaken St Germain's stature among his colleagues, McAuliffe said. He said this could affect the congressman's ability to make legislative deals and could result in House members from around the country showing more interest in defeating him.

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TV ad takes aim at St Germain

REP. St GERMAIN
... 'Let's have a disclosure of how this ad was prepared and paid for.'

PROVIDENCE (UPI) — The National Republican Congressional Committee has started playing hardball with veteran Rep. Fernand St Germain.

The committee has produced a 30-second television commercial demanding the First District Democrat disclose his income tax returns. St Germain has been the target of a growing controversy over his financial background and how he accumulated some of his wealth.

Two of the three television stations in Rhode Island have agreed to air the unusual spots, which do not promote a Republican candidate. State GOP Chairman John Holmes is considered the most likely person to challenge St Germain at the polls next year.

The ad, which WJAR-TV, Channel 10, and WPRI, Channel 12, said they will air, says St Germain's behavior "seems unethical" and asks him to "come clean." The ad ends with a picture of a 1040 tax form and asks the congressman to "tell the truth."

WLNE, Channel 6, has refused to broadcast the spots.

St Germain issued a statement Monday condemning the commercial.

"Let's have a disclosure of how this ad was prepared and paid for," St Germain said. "Where did the money really come from? Fat cat bankers? Fat cat corporations? Fat cat Republicans?"

St Germain has been under fire since the Wall Street Journal reported that he became a millionaire by investing with firms and individuals that benefited from his actions as chairman of the influential House Banking Committee.

In addition, St Germain, who has held the First District seat for 24 years, has admitted that he may have to make a substantial settlement with the Internal Revenue Service because the government has disallowed some of his tax shelter investments.

NEWPORT NEWS
12/10/85

Republicans offer TV commercial seeking St Germain tax returns

Evening Times 12/10/85

EXHIBIT A

PROVIDENCE (AP) — Republicans have stepped up their attack on Democratic Rep. Fernand St Germain with a commercial set to air locally this week demanding he release his income-tax returns.

The commercial sponsored by the National Republican Congressional Committee uses a man-on-the-street format to attack St Germain for allegations he became rich with the help of people and institutions he dealt with as chairman of the House Banking Committee.

"What he's done may not be illegal. It seems unethical, but we won't know until he comes clean," says a woman in the commercial.

The commercial is part of a GOP campaign to keep pressure on St Germain — who has held the 1st District seat for 13 terms — even though the election is 11 months away and no Republicans have formally announced their planned opposition.

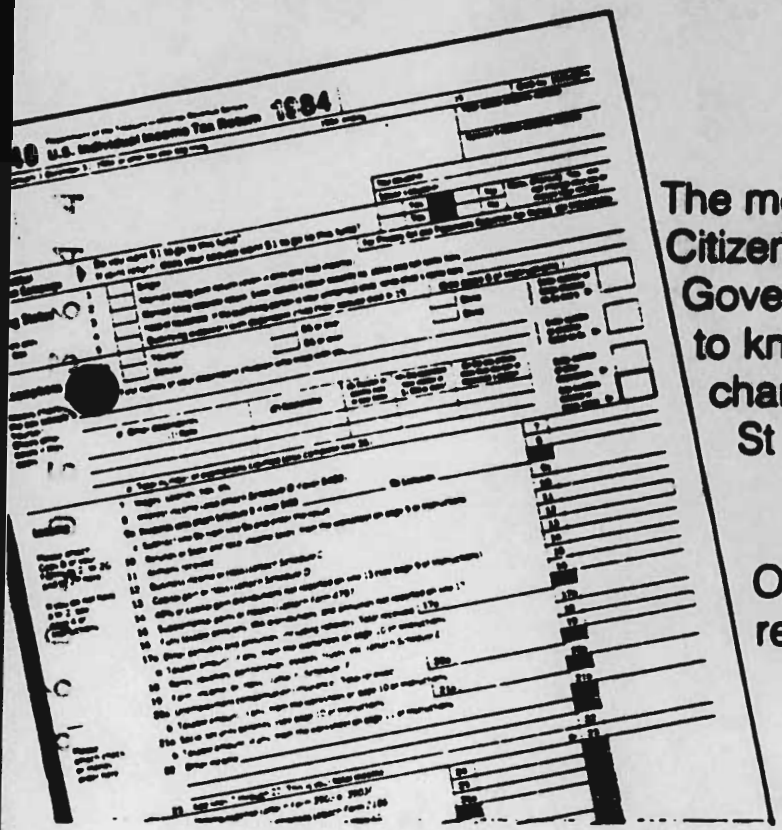
St Germain, who has repeatedly refused to release his tax forms, issued a statement accusing the Republicans of hiding behind the finance issue to play politics.

EXHIBIT B

Rhode Island Citizens For
Accountability In Government
P.O. Box 28672
Providence, Rhode Island 02908

Bulk Rate
U.S. Postage
PAID
Providence, R.I.
Permit #0127

Tell us the *truth*, Congressman St Germain



The members of Rhode Island Citizens for Accountability in Government—a non-partisan group—want to know the truth about the financial charges made against Congressman St Germain.

Only you, Congressman, can set the record straight.

No Postage
Necessary
If Mailed
In The
United States

BUSINESS REPLY MAIL
First Class Permit No. 140B Providence, R.I. 02908

Postage will be paid by Addressee

RHODE ISLAND CITIZENS FOR
ACCOUNTABILITY IN GOVERNMENT
P.O. BOX 28672
PROVIDENCE, RHODE ISLAND 02908-9990

RHODE ISLAND CITIZENS FOR ACCOUNTABILITY IN GOVERNMENT

Dear Taxpayer:

You may have heard that our Congressman, Fernand St Germain, has been accused of some very serious charges.

According to the *Wall Street Journal, The Providence Journal Bulletin,* and other respected newspapers, Congressman St Germain has amassed a multimillion dollar personal fortune by using his public position to help wealthy investors.

It's time to clear the air.

That's why Rhode Island Citizens for Accountability in Government are asking Congressman St Germain to disclose in detail his financial records and make available to the public his tax returns.

Unfortunately, St Germain has refused. And that's bad because the people of Rhode Island have a right to know if our Congressman is telling the truth.

We also have a right to know if St Germain is trying to hide something.

In past years, public officials of both political parties have given the public a complete financial accounting of themselves.

Some who come quickly to mind are Richard Israel when running for Attorney General, John Hawkins for U.S. Senate, Joseph Garrahy for Governor, Vincent Cianci, Jr. for Mayor of Providence, and incumbent Mayor, Joseph Paolino, Jr.

If they found this course suitable, why not Congressman St Germain?

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The petition asks the U.S. House of Representatives' Ethics Committee to officially investigate these serious charges and further demands that St Germain publicly disclose his taxes and finances.

The people of Rhode Island deserve to know the truth. The time for answers is now.

Sincerely,

Sandra Winslow

Sandra Winslow, Chairperson

P.S. Please sign the petition and mail immediately.

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EXHIBIT C

DEC. 14, 1985

THE PROVIDENCE JOURNAL-BULLETIN

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Journal-Bulletin Political Writer

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8/5/82

Paul Tamm

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PJ 8/3/85

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As for why stories about the Perland incident were included, McAuliffe said it was to demonstrate a further link between St Germain and developer Roland Perland. The *Wall Street Journal* detailed a close relationship, both in politics and in investments, between St Germain and Perland.

The package of clippings was sent to congressmen with a covering letter from Joseph R. Gaylord, NRCC executive director, outlining the St Germain-*Wall Street Journal* situation, mentioning that the *Providence Journal* and Washington *Post* have editorialized on the subject, and noting that Common Cause has sought an ethics panel probe. The articles were being enclosed, Gaylord wrote, for "your further review and interest."

McAuliffe, who is responsible for overseeing 108 House races in the Northeast, said Rhode Island's First District is one of 10 on which he is concentrating. "My job is to do whatever I can to get Republicans elected to Congress, and I choose vulnerable seats and I think Freddy St Germain is more vulnerable than many people realize," he said.

Among people he works with are Barrington's Thomas J. Cahill, who heads a committee monitoring St Germain and paving the way for Republican challengers. Cahill is a close friend of GOP state chairman John A. Holmes Jr., who is gearing up to run against St Germain.

McAuliffe said the home went to all congressmen because "we're trying to make all the members aware these allegations exist. Freddy St Germain probably has a reputation there of being a strong, self-serving Democratic chairman, and I think it's enough to rile at least 182 Republicans in the House and probably a number of Democrats, conservative Democrats."

Financial/political controversy, combined with an ethics probe, eventually could weaken St Germain's stature among his colleagues, McAuliffe said. He said this could affect the congressman's ability to make legislative deals and could result in House members from around the country showing more interest in defeating him.

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OFFICE OF THE
GENERAL COUNSEL

PERKINS COIE
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1110 VERMONT AVENUE, N.W. • WASHINGTON, D.C. 20005 • (202) 887-9030

85 DEC 26 P 2: 33

ROBERT F. BAUER

December 23, 1985

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

Gentlemen:

On Friday, December 20, 1985, this office filed a Complaint on behalf of the Democratic Congressional Campaign Committee, against the National Republican Congressional Committee, John A. Holmes, Jr., and others.

Please be advised that for communications purposes, the name and telephone number of the Complainant's counsel is:

Robert F. Bauer, Esq.
Perkins Coie
1110 Vermont Avenue, N.W.
Suite 1200
Washington, D.C. 20005

(202) 887-9030.

Thank you for your attention to this matter.

Very truly yours,

Robert F. Bauer

RFB/lff

8604059365 0

FEDERAL ELECTION COMMISSION

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

THIS IS THE BEGINNING OF MUR # 2116

Date Filmed 6/25/86 Camera No. --- 2

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THE FOLLOWING MATERIAL IS BEING ADDED TO THE PUBLIC FILE OF CLOSED MUR 2116 .

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MUR 2114 — MB

PS Form 3811, Jan. 1979

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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

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

   (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
   Robert F. Bauer, Esquire
   Perkins Coie
   1110 Vermont Avenue, NW
   Washington, DC 20005

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	943572	

(Always obtain signature of addressee or agent)

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

Ricky K Dew 540

4. DATE OF DELIVERY — POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE

WASHINGTON, DC BEN FRANKLIN
JUN 18 1986
CLERK INITIALS

USPS

GPO : 1979-300-150

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FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

THE FOLLOWING MATERIAL IS BEING ADDED TO THE PUBLIC FILE OF CLOSED MUR 2116.

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political expression to asure [the] unfettered interchange of ideas." Buckley v. Valeo, 424, U.S. 1, 14 (1986). Political parties engage in precisely this type of political expression and, in fact, exist for this very political purpose. Not only do the parties promote candidates, but they also debate the positions and qualifications of officeholders, sponsor policy discussions, engage in party-building activity, and release issue-oriented mailings to the public on topics of government and governance. Speaking on all these issues is fundamental to the party system.

The Supreme Court has stated that the Commission cannot constitutionally regulate the discussion of all public issues even if the discussion "draws in candidates and their positions, their voting records and other official conduct." Buckley at 42 n.50 (emphasis added). Although the discussion of issues "naturally and inexorably...exert(s) some influence on voting at elections" the Commission may only regulate those communication which, at a minimum, contain an electioneering message urging the public to vote for a particular candidate or party. Id. Limiting a party's issue-oriented speech conflicts with the decisional law that clearly divides the regulated advocacy of campaigns and elections from the free discussion of issues, officeholders, their conduct and their votes. Buckley at 42-45; Central Long Island Tax Reform Immediately Committee v. FEC, ("CLITRIM") 616 F.2d 45, 53 (2nd. Cir. 1980).

The Commission requires a clearly identified candidate and an electioneering message to avoid allocating a party's issue-oriented speech as a coordinated expenditure. Based on Commission precedent, we reviewed the text of this mailer and found no electioneering message in this case. The mailing merely discussed the ethics of an officeholder

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which is the right of any citizen, political party or lobbying group. This mailing clearly does not "urge" any election-related action. In fact, it explicitly directs readers away from the election process by saying the "only" actions are signing the enclosed petition and demanding the disclosure of St Germain's tax returns.

The General Counsel's recommendation to allocate this expenditure ignored the wording of the mailer, misread Commission precedent and relied on irrelevant facts and imputed motivations. This is not "in fidelity" to the established objective approach in finding electioneering messages. Accordingly, Commission precedent has not been "slighted" by our votes in this case but has, in fact, been "kept in order."

Thomas J. Josefiak
Commissioner

Lee Ann Elliott
Commissioner

April 5, 1988

Attachments
I. Text of NRCC Mailer
II. Relevant portions of AO 1985-14
III. Various newspaper articles and editorials

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Statement of Reasons
MUR 2116
Attachment I

Text of NRCC Mailer:
RHODE ISLAND CITIZENS FOR ACCOUNTABILITY IN GOVERNMENT

Dear Taxpayer:

You may have heard that our Congressman, Fernand St Germain, has been accused of some very serious charges.

According to the Wall Street Journal, The Providence Journal Bulletin, and other respected newspapers, Congressman St Germain has amassed a multimillion dollar personal fortune by using his public position to help wealthy investors.

It's time to clear the air.

That's why Rhode Island Citizens for Accountability in Government are asking Congressman St Germain to disclose in detail his financial records and make available to the public his tax returns.

Unfortunately, St Germain has refused. And that's bad because the people of Rhode Island have a right to know if our Congressman is telling the truth.

We also have a right to know if St Germain is trying to hide something.

In past years, public officials of both political parties have given the public a complete financial accounting of themselves.

Some who come quickly to mind are Richard Israel when running for Attorney General, John Hawkins for U.S. Senate, Joseph Garrahy for Governor, Vincent Cianci, Jr. for Mayor of Providence, and incumbent Mayor Joseph Paolino, Jr.

If they found this course suitable, why not Congressman St Germain?

Just at a time Rhode Island citizens are demanging our leaders be honest and above reproach, we cannot afford to have this dark cloud hanging over our heads.

There's only one solution: Congressman St Germain must come clean by fully disclosing his taxes and finances. To do otherwise would bring an end to our efforts to rid our government of corruption and those who seek personal gain.

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That's why we--Rhode Island Citizens for Accountability in Government--urge you and other members of your household to sign the attached petition and mail it to us immediately.

The petition asks the U.S. House of Representatives' Ethics Committee to officially investigate these serious charges and furhter demands that St Germain publicly disclose his taxes and finances.

The people of Rhode Island deserve to know the truth. The time for answers is now.

Sincerely,

Sandra Winslow
Chairperson

P.S. Please sign the petition and mail immediately.

To: Honorable Julian Dixon, Chairman

I (we), the undersigned, urge the Ethics Committee of the House of Representatives to conduct an official investigation into the accusations against Congressman St Germain and further ask that Mr. St Germain's tax and finance records be fully disclosed. Thank you.

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Statement of Reasons
MUR 2116
Attachment II

Relevant Portions of AO 1985-14

DCCC is registered with the Commission as a party-related, multi-candidate political committee....You state that DCCC plans to initiate a program involving criticism of the records of individual Republican members of the House of Representatives and of the activities of Republican Members of Congress as a class.

You add that DCCC's program will have "the clear purpose of influencing voter perceptions of these candidates with a view toward weakening their positions as candidates for re-election in 1986."...These communications will include television and radio broadcasts, newspaper and other print advertising, and direct mail brochures....

"Pliers and Toilet Seats"
(Script for Radio/TV Ad)

Background: Loud laughter and applause

Voice No. 1: What's going on? What's so funny?

Voice No. 2: (laughing intermittently): Oh, that's the President getting a good laugh from the crowd in Washington, the Republicans in Congress. He says we should take care of the farm crisis by keeping the grain (begins to burst into uncontrolled laughter)--and exporting the farmers!!!

Voice No. 1: (with anger): That's not funny at all; this farm crisis is real and endangering the very existence of family farms. People are really suffering.

Voice No. 1: Who cares? The Republicans sure don't. So just join the crowd and have a good laugh.

Announcer: But it is not a laughing matter. The President and his Republican supporters in Congress are enjoying this joke at the expense of the American farmer--but the last laugh is on you and on your children. And while the Republicans are breaking every election-year promise they ever made to the American farmer, they just look on and smile when multi-billion dollar defense contractors charge you--the taxpayer--$_____for a pair of pliers and $_____for a toilet seat. That's the real joke.

(Pause)

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Announcer: Let your Republican Congressman know that you don't think this is funny.

(Or, in some ads: Let the Republicans in Congress know what you think about their sense of humor.)

[In some scripts, the text closes with "Vote Democratic"]

"Crumbling Foundation"
(Script for Radio/TV Ad)

Sound: A crumbling, cracking sound of something "giving away."

Announcer (with sound in background): You read the newspaper nowadays and what do you find: stories about collapsing banks, people in a panic over the loss of their savings, federal and state government coming up with rescue plans and bailouts.

(Sound in background get louder)

Announcer: It all sounds too familiar, like 1932, but it's not then. It's now. And it's real.

(Sound in background increases in volume)

Announcer: The President and his Republican allies in Congress are all smiles, they tell us not to worry. But under their leadership, the budget deficit grows to monstrous proportions, Wall Street is nervous, the dollar begins to show signs of weakness.

(Sound comes to fore, very loud and then replaced by a moment of silence)

Announcer: We've seen all this before: let's make sure it doesn't happen again. Let your Republican Congressman (or in some ads, the Republicans in Congress) know that their irresponsible management of the nation's economy must end--before it's too late.

[In some scripts, test closes with "Vote Democratic"]

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(Text of) SAMPLER MAILER

Wave of the Future?

The wave of the future could be an oil spill if Cong. X has his way!

List of X's contributions from oil industry

Don't be fooled by Republican rhetoric. Save our coastal environment.

Let Congressman X know how you feel.

[In some scripts, the text closes with "Vote-Democratic".]

Both the "Pliers and Toilet Seats" and the "Crumbling Foundation" scripts offer two alternative taglines: one referring to "your Republican Congressman" and one referring to "the Republicans in Congress." You further state that some scripts will also close with a "Vote Democratic" statement. The Commission concludes that DCCC's expenditures for its proposed radio and television advertisements (with scripts as set forth in this opinion) that use the tagline, " the Republicans in Congress," either with or without the "Vote Democratic" statement (or other electioneering message), will not be subject to the Act's limitations. In addition, the Commission concludes that DCCC's expenditures for its proposed advertisements that use the tagline, "your Republican Congressman," without the "Vote Democratic" statement, will also not be subject to the Act's limitations. Instead DCCC may report these expenditures as operating expenditures. See 11 CFR 104.3(b). These conclusions also apply where the advertisements are directed to only selected congressional districts.

With respect to DCCC expenditures for the proposed radio and television advertisements that use the tagline, "your Republican Congressman," together with the "Vote Democratic" statement, the Commission considered alternative responses but on a tie vote was unable to agree whether such expenditures would or would not be subject to the Act's limitations and attributable pursuant to 11 CFR 106.1. See 11 CFR 112.4(a).

With regard to DCCC's proposed sample mailer, the Commission assumes that its references to "Cong. X" indicate that a specific congressman will be identified by name. The Commission also assumes that the mailer"s dissemination may include part of all of the district represented by the identified congressman. The Commission concludes that DCCC's expenditures for producing and disseminating the mailer either with or without the "Vote Democratic" statement will be subject to the Act's limitations and attributable pursuant to 11 CFR 106.1.

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Making a Fortune

a Private Investor, House Banking Chief Has Grown Very Rich

Rep. St Germain Has Had Lots of Help From Those He Has Aided Officially

The Summer Life in Newport

By Brooks Jackson
And Tim Carrington
Staff Reporters of The Wall Street Journal

"I'm here to represent Mr. and Mrs. Consumer, like my mother and dad."— Rep. Fernand St Germain, in an interview.

WASHINGTON — While Raleigh Greene's Florida savings and loan association was seeking federal permission to issue stock in 1983, Rep. Fernand St Germain's top aide was repeatedly phoning regulators to check on the progress of the application. When the sale was approved, the congressman bought more than $15,000 e newly issued stock.

uch is the private financial life of Rep. St Germain (he doesn't use the conventional period in his last name), who is chairman of the House Banking Committee and self-proclaimed champion of consumers and common folk like his working-class parents. Ever so quietly, during his 24 years in the House, the Rhode Island Democrat has become a millionaire. An examination of his private investments shows that, in acquiring his fortune, the congressman has had lots of investment help from people and institutions that have benefited from his official actions.

Fernand St Germain

As House banking chairman, the 57-year-old Mr. St Germain is among Congress's most powerful lawmakers. He presides with unusually strong authority over a committee that routinely handles multibillion-dollar matters that shape the nation's fast-changing financial system. He also is a force to be reckoned with at fed- banking agencies. And as his power grown, so has his wealth. (The Internal Revenue Service is investigating what t terms "abusive" tax shelters into which he congressman put $120,000 of his money for $405,000 in promised tax deductions. See story on page 1.

Close to the Vest

Mr. St Germain insists he has steered clear of ethical problems. "I have invested in diverse areas along with friends and business associates," he says. "At all times, I have been scrupulous to avoid conflicts." The congressman—who once boasted that his cards aren't close to his vest, "they're imprinted on my chest"—won't discuss many details of his personal holdings.

The analysis of his finances has been pieced together from his sometimes-incomplete financial-disclosure forms, from interviews, and from public records on file at the Securities and Exchange Commission in Washington and in more than a dozen state and county offices in Rhode Island, Florida, Texas, New York and Maryland. It includes these findings:

—Mr. Greene, the founder and chairman of Florida Federal Savings & Loan in St. Petersburg, Fla., arranged for Mr. St Germain to be included in several potentially lucrative real-estate investments in Florida. Meanwhile, Mr. St Germain's chief of staff contacted the federal Home Loan Bank Board on matters concerning Florida Federal.

Mr. Greene says he never asked Mr. St Germain to intervene on his behalf at federal agencies. He confirms that he invited the congressman into three land-ownership deals, which weren't offered to the public. "It's like anything else," Mr. Greene says. "You sit down with your buddies and say, 'Do you want in?' And you either say yea or nay."

—The foundation of Mr. St Germain's wealth, five International House of Pancakes restaurants, was bought with $1.3 million in mortgages from Rhode Island lending institutions that put up nearly 100% of the purchase price and assumed most of the risk. One lender then publicly praised Mr. St Germain's legislative help.

—Rep. St Germain is still reaping profits from earlier, publicized real-estate investments arranged by a Rhode Island developer, Roland Ferland, who himself profited from federally subsidized housing developments that the congressman helped obtain for the state.

Blue-Collar Constituents

The congressman still seeks to appeal to blue-collar constituents in his industrial hometown of Woonsocket. At a hearing last year, for example, he pounced on a witness who argued that a certain proposal was favored by a banker in Newport, part of Mr. St Germain's district. "Newport!" he sputtered. "That's where the millionaires have their mansions."

But Mr. St Germain has become a Newport millionaire himself, golfing there during the summer at country clubs, staying there at his recently acquired $200,000 condominium near the waterfront and dropping in at celebrity tennis matches and an America's Cup yacht christening. Newport's Republican Mayor Patrick Kirby marvels at the social blossoming of "the new Freddy."

In winter, the congressman has jetted for which lobbying and trade groups picked up the tab, to such sunny places as Puerto Rico, Boca Raton, Fla. and Hilton Head, S.C. He spends several weeks a year at his $138,900 condominium in a luxury high-rise building in St. Petersburg, Fla.

His holdings last year included residential properties valued at $1.9 million and a portfolio of stocks, real-estate partnerships and money-market mutual funds that he valued at between $325,017 and $9[illegible]. He recently bought two more Florida condominiums as rental properties, a beach [illegible] near Punta Gorda for $130,000 and a golf resort property in Titusville for $4[illegible].

Mr. St Germain didn't inherit his wealth; his father was a foreman in a [illegible] plant. A lawyer, he didn't marry into it. He made his fortune in the private sector in 1964, after his congressional pay was raised to $30,000 a year from $2[illegible]. He told a newspaper interviewer that members of Congress would never get rich in office. "Whatever you make, you're going to spend," he said then.

But as he climbed the seniority ladder to become Banking Committee chairman in 1981, his resulting power over the nation's banking, insurance, brokerage and construction industries expanded, and so did his wealth. An estimate of his net worth at the end of last year is between $2 million and $2.6 million, not counting a home in Woonsocket and a condominium residence in Washington, D.C.

Most recently, he has plunged into Florida real-estate investments with the help of Mr. Greene. Starting in December 1[illegible], Mr. St Germain, Mr. Greene and others bought unimproved land around Alachua, Fla., near Gainesville, with the idea of subdividing it for sale as home sites. Neither man's name appears on deed or mortgage records, however, because the purchase was made through a trust, as permitted by Florida law. In his annual financial disclosures, Mr. St Germain values his investment in the Alachua deal at between $[illegible],001 and $50,000. Mr. Greene confirms that he is a co-investor with the congressman.

About 1983 or before—Mr. St Germain has omitted the purchase date from his financial disclosures—the congressman acquired an interest, which he values between $5,001 and $15,000, in a Tampa, Fla. parking lot that is also owned through a trust. Mr. Greene says he, some of his partners and Mr. St Germain are co-trustors.

In 1982, Messrs. Greene and St Germain joined with others to buy, through another anonymous trust, 160 acres of farmland in the path of development about five miles north of Tampa International Airport. Land records show the trustee paid about $1.7 million. The congressman's disclosures say he paid between $15,001 and $[illegible],000 for his interest, and says it also produced income of between $5,001 and $[illegible],000. Mr. Greene says he expects the land transactions to be profitable. "This is a booming part of the world," he [illegible]

The fortunes of Mr. Greene's savings association depend in large part on legislation that passes through Mr. St Germain's committee. Furthermore, the congressman's chief of staff at the committee, Paul Nelson, has repeatedly contacted federal regulators concerning Florida Federal's applications.

In 1983, when Florida Federal was applying to convert itself from a depositor-owned mutual association to a stock corporation, Mr. Nelson called top board officials several times asking about the conversion plan. Through a press spokesman, Mr. Nelson denies any intent to bring pressure on the agency, saying "those were simply calls about the status and no more than that."

Some board officials saw these calls as a none-too-subtle prodding, however. "When the chairman of the House Banking Committee makes the inquiry and is interested, you know he's not interested in having the thing turned down," says a former senior attorney at the agency.

That wasn't the first such contact. A bank board official, now retired, recalls that he became "absolutely livid" when a St Germain aide called him to complain that Mr. Greene's son, Raleigh Greene III, who was then Florida Federal's outside counsel, had been treated rudely by the bank board staff. Actually, the official says, "We treated him with complete courtesy, but we didn't give him what he wanted."

More recently, according to an attorney still employed at the agency, Mr. St Germain was "creating heat" on the agency's staff last summer to complete a review of an application by Florida Federal to acquire First Mutual Savings & Loan Association of Pensacola, Fla. The bank board was insisting on several conditions, and the S&L eventually dropped the merger plan.

The Banking Committee chairman's relationship with Mr. Greene was well-known around the bank board, a former board member says. "I knew that Raleigh and Freddy were good friends," he says. "If I wanted to lobby Freddy, I would talk to Raleigh."

But this same former board member expresses astonishment when told that the two men were business partners and that the congressman had bought stock in Florida Federal shortly after the board cleared its sale. Mr. St Germain bought between $15,001 and $50,000 of the stock in mid-1983, but he omitted disclosure of the stock purchase when he filed his next annual financial return in May 1984. Last year, after being questioned by this newspaper about omissions on his disclosure form, the chairman filed an amended report that showed for the first time that he held common stock in the S&L.

(Federal law makes it a civil violation, punishable by a fine of up to $5,000, for a congressman to "knowingly and willfully" fail to report required information. In serious cases, it can be a felony punishable by up to five years in jail and a $10,000 fine for a congressman to make "false or fraudulent statements" on his disclosure forms.)

Mr. Greene says he didn't discuss the stock purchase with the congressman or ask him to intercede with regulators. Mr. St Germain declined requests to be inter-

Soon after this newspaper began [illegible] the congressman's press spokesman [illegible] the Florida Federal connection, [illegible] Germain sold the stock. He disclosed the sale in an unusual footnote to his latest disclosure report. "The acquisition was intended to be temporary," he said. "My entire interest in the (savings) association was sold on May 22, 1985." That was nearly two years after he bought the stock, and he probably lost money if he bought the shares at the initial offering price of $20 a share. It closed at $18.75 the day he says he sold it.

By the time he became Mr. Greene's business associate, Rep. St Germain was already comfortably fixed, thanks largely to an investment made in 1972, after he became chairman of the Subcommittee on Bank Supervision. Using money borrowed from Rhode Island lending institutions, including federally regulated banks, he quietly purchased five restaurant buildings from International Industries Inc. of Beverly Hills, Calif., franchiser of the International House of Pancakes chain.

His ownership of the restaurants for years was hidden from the public, and he disclosed the bare outlines of it in 1978 only when required by the new Ethics in Government Act. That disclosure didn't tell the whole story, but Common Cause, the self-styled citizens' group, said then that his large bank loans posed a potential conflict of interest. And his Republican congressional opponent, John J. Slocum, charged: "Here's a man who's been in Congress for the past 18 years, living off a congressional salary, maintaining two homes, traveling back and forth between his offices, and suddenly, lo and behold, at year's end 1977 he's got all the assets he has."

Rhode Island voters returned Mr. St Germain to office handily, but what they didn't know is that he got the loans without putting up much of a down payment. The new ethics law didn't require such information, and the congressman didn't volunteer it.

For example, deed and mortgage records show that the Rhode Island Hospital Trust, a national bank based in Providence, lent him $2,500 *more* than the $239,500 purchase price of a restaurant he bought in the Bronx borough of New York City. Similarly, records show that Industrial National Bank (now Fleet National Bank) of Providence, lent him a net total of $1,000 *more* than the combined purchase prices of two restaurants he bought within four days of each other, one in Providence and the other in nearby Cranston, R.I.

Not long after, according to newspaper accounts at the time, Old Stone Savings Bank, which held a mortgage loan of $236,550 on the congressman's restaurant in Richardson, Texas, printed Mr. St Germain's picture in the pre-election issue of its shareholders' newsletter in 1978 with a story praising him for legislation. The headline: "Old Stone wins congressional support in opposing reserve bill—would have reduced Old Stone earnings."

Mr. St Germain says he didn't do any special favors for his lenders. He says his

no-money-down financing was justified because the mortgages were secured both by the property and by leases executed by the tenants, giving the lenders assurances of adequate cash flow to cover the payments.

But lenders seem to have assumed the major risk. They lent the congressman a total of $1.3 million at a time when his congressional salary was $42,500. The mortgages didn't make Mr. St Germain personally liable for payments had any of the restaurant operators failed.

Though the congressman's risk was small, his profits have been substantial. Total gross rents amounted to $165,000 in 1978, the only time Mr. St Germain volunteered the exact amount. They have almost certainly escalated since because they are based on a percentage of the tenants' sales. Meanwhile, inflation sent the property values soaring. Last Dec. 31, the congressman sold his Providence, R.I., restaurant for $470,000, a nearly 59% gain over the purchase price. Official tax assessments of the remaining four restaurants indicate their values have risen at roughly the same rate. Land records indicate that Mr. St Germain probably cleared about $400,000 on the sale of the Providence restaurant.

The lending institutions that made all this possible won't comment on the transactions. "We don't discuss or give out any information about private individuals," says a spokesman for Fleet National Bank, which made two of the mortgage loans.

Mr. St Germain insists the loans were made "on market terms" and adds, "All the terms have been met. The loans were clearly good business for the financial institutions."

Mr. St Germain was introduced to real estate investing as early as 1971 by his longtime friend, political fund-raiser and fellow Woonsocket native Roland Ferland. While the congressman used his growing political leverage on the banking committee and with federal agencies to help obtain federally subsidized housing projects for Rhode Island, Mr. Ferland became one of the state's biggest developers and operators of those projects. In the early 1970s, Mr. St Germain asked to be allowed to invest in some of Mr. Ferland's unsubsidized luxury-apartment developments. "I said, 'If something comes along, I hope you'll consider me,' " the congressman recalls. Partnership records show he eventually put up an initial $12,500 to buy a 15% interest in two of Mr. Ferland's developments, and a 20% interest in a third. The records show he was the only investor outside the Ferland family.

The Ferland transactions paid handsome returns. Mr. St Germain, in his latest financial disclosures, reports selling a part interest in one Ferland partnership for between $100,000 and $250,000 in 1980 and reports receiving between $30,002 and $100,000 as a "cash distribution" from another during 1983 and 1984. His recent disclosures do not mention the third partnership, although land records show it was selling units as condominiums during 1983.

Mr. Ferland, who was treasurer of Rep. St Germain's first congressional campaign, is a founder and behind-the-scenes power of the political-action committee of the National Association of Home Builders. The PAC donated to Rep. St Germain's lightly contested 1984 reelection campaign, helping to swell his current campaign war chest to $602,650, one of the biggest of any House member. The congressman recently announced he will seek reelection again next year.

Mr. St Germain says he sees no ethical problem with his investments in the Ferland developments because the developments he owns don't receive direct federal subsidies. "I've always paid my share," he says. "No special considerations."

Indeed, the congressman maintains that he takes extra care to avoid being influenced by moneyed interests. He says he no longer accepts speaking fees for appearing at financial-industry gatherings (though the hosts still pay his expenses). "You can be very independent when you don't take honorariums," he says. "I think that we (in Congress) should be able to survive on what we get."

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P. 3 91 12185

IRS: Tax shelters used by St Germain 'abusive'

The Wall Street Journal

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WASHINGTON — While other Democrats preached tax reform, Rep. Fernand St Germain was investing in some legally dubious tax shelters.

The House Banking Committee chairman cut his federal income taxes by putting money into shelters offering write-offs of more than $400,000 for a cash investment of $120,000 or less. The legality of the shelters — which were set up ostensibly to mine coal in Kentucky — is currently being challenged by the Internal Revenue Service.

Mr. St Germain won't disclose his returns, so it isn't known what taxes he actually paid, if any. But from Dec. 29, 1978, to March 31, 1982, he poured tens of thousands of dollars into a series of limited partnerships that, according to confidential private placement memorandums that the promoter circulated to potential investors, promised quick tax deductions of between $3.01 and $3.60 for every $1 paid in.

These tax shelters — Darnell Associates, Lighthouse Hill Associates, ARG-80 Associates and Trinity Associates — were put together by a securities firm in New York. Partnership records on file in various county courthouses in New York state show that Rep. St Germain put up no more than $120,000 cash, and perhaps as little as $105,000 plus a $15,000, non-interest-bearing IOU. For this cash, or cash and paper, the promoter's private-placement memorandums promised write-offs totaling $405,344 during the first two years of each partnership.

If the congressman was in the 50 percent tax bracket in each of the five years in question, he would have reduced his federal income taxes by a total of $202,672. That would have left him $82,672 ahead on the deal before the first lump of coal was sold.

As it happened, the partnerships were far more successful at mining the U.S. Treasury than they were in mining coal. The promotor, Swanton Corp. of New York City, earlier this year filed for protection from creditors under Chapter 11 of the bankruptcy law. Earlier, Swanton filed an extensive disclosure statement at the Securities and Exchange Commission in Washington showing that its coal-mining ventures had been miserable failures. In all, 48 partnerships promoted by Swanton from 1977 and 1984 mined only 1% of the coal they had originally projected and repaid the limited partnership only about two cents of each dollar they put in.

The four tax shelters in which the congressman put his money didn't fare any better than the others. Swanton's SEC filings, coupled with its confidential placement memorandums, show that the four partnerships in which he was included mined only 1.6% of the cost originally projected. One was discontinued and three others were "delayed" by "adverse market conditions," according to Swanton's disclosure statement. The limited partners were paid back an average of only 0.6 cent for every dollar they put in.

The IRS is currently contending that the partnerships were just a means to milk the tax system, not bona fide business ventures. Swanton disclosed in a public filing that the IRS, after a year-long investigation, told the company on April 15 that it believes Swanton's coal partnerships violated Section 6700 of the tax code. That section forbids promotion of "abusive" tax shelters, defined as partnerships that obtain tax benefits by means of fraud or gross overstatement of the value of property or services.

Swanton denies the allegation. "It is Swanton's position that it has not violated Section 6700 in any manner," the company says in an SEC filing. But Rep. St Germain could possibly face a demand from the IRS for payment of back taxes and interest. Swanton says the limited partnerships in its coal programs are likely to be audited because of the IRS's contention that they were abusive.

Mr. St Germain won't discuss these partnerships except to say in a letter that they "were for a twofold purpose. They provide what could be a tax shelter, and they were purchased during the period when experts felt that coal certainly was a good investment for a return in the future."

Yet the partnerships warned, in their confidential placement memorandum, that the promoter had mined only "minimal" amounts of coal in the past and was offering tax write-offs based on legal positions that the courts hadn't tested and with which the IRS "may not agree."

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P.J. Editorial 9/13/85

Mr. St Germain can help clear the air

9/13/85

Rep. Fernand J. St Germain's substantial accumulation of wealth during 13 terms in Congress is in the news again. A tantalizing political topic locally for years, the matter reached a national forum this week with a *Wall Street Journal* article (reprinted yesterday in these newspapers) on the congressman's growing affluence in tandem with his ascendancy in the U.S. House. Mr. St Germain, chairman of the powerful House Banking Committee, reacted by rejecting any link between that position and his personal fortune — and by complaining the latter was far overestimated. On this final point, at least, he can easily end all speculation.

Mr. St Germain has announced for reelection in 1986. All he needs to do is what a number of other major Rhode Island political candidates have done in past years: publicize his income-tax returns and net-worth statements. Although such information is properly confidential for average citizens, its disclosure by public office-seekers is hardly unwarranted. This is particularly true in the case of an official whose private income has been the subject of repeated question.

Even without having aroused this kind of curiosity that has marked Mr. St Germain's personal finances, various candidates of both political parties have voluntarily given the public a complete financial accounting of themselves. Some who come quickly to mind include Richard J. Israel when running for attorney general, John Hawkins for U.S. Senate, J. Joseph Garrahy for governor and Vincent A. Cianci Jr. for mayor of Providence, as well as the incumbent mayor, Joseph R. Paolino Jr. If they found this course suitable, why not Mr. St Germain?

So far, the First District congressman has restricted his disclosures to those required by the federal Ethics in Government Act. This post-Watergate law demands only that congressmen report their finances within broad categories; exact figures remain shrouded. If such imprecision has contributed to what Mr. St Germain claims are exaggerated estimates of his holdings (pegged at between $2 million and $2.6 million by the *Wall Street Journal*), then the congressman ought to furnish his income-tax return and net-worth statement for a more accurate reading. Other candidates have adopted this as a good practice. It would seem specially appropriate for someone in Mr. St Germain's situation.

Editorial
Washington Post Date?

Washington Post ?

To the Ethics Committee

IN THE PAST two weeks, charges of varying seriousness have been made against two senior members of the House, Reps. Fernand St Germain (D-R.I.) and Dan Daniel (D-Va.). These both need to be resolved by the House ethics committee, though not necessarily in the same way.

Mr. Daniel has already pointed the way to a resolution in his case. He has admitted that he repeatedly flew back to his Southside district in planes owned by Beech Aircraft Corp., but did not report them on his disclosure form. House rules require disclosure of gifts, including transportation, worth more than $100, from companies with an interest in legislation. Mr. Daniel says he did not report these trips because the commercial airfare was $98 per trip. He has now agreed to reimburse the money and to amend his disclosure form. The ethics committee may want to consider the case, if only to clarify the law. But no one in the House seems to doubt Mr. Daniel's integrity, or to believe that he did anything worse than make an honest mistake.

The charges against Mr. St Germain, made in The Wall Street Journal last week by reporters Brooks Jackson and Tim Carrington, are on their face more serious. The Journal reported, first, that Mr. St Germain bought five International House of Pancakes restaurants with $1.3 million in loans from Rhode Island banks, on terms that required him to put up little or no cash. Second, the article reported Mr. St Germain profited from real estate investments arranged by a Rhode Island developer who profited from federally subsidized housing programs Mr. St Germain helped obtain for the state. Third, it said Mr. St Germain has benefited from land deals in Florida arranged by a developer who chairs a savings institution regulated by the Banking Committee, and that a top St Germain staffer made calls to federal regulators about applications by the developer's firms.

These charges raise, though they of course do not settle, the question of whether the chairman of the Banking Committee may have used his influence over legislation to enrich himself. It is undisputed that Mr. St Germain entered Congress in 1960 with minimal financial assets and now has a net worth over $2 million. His committee has jurisdiction over heavily regulated businesses, and any member should avoid more assiduously than Mr. St Germain seems to have done even the appearance of using his influence to enrich himself.

Why hasn't the ethics committee taken public action to look into these matters? The quick answer is, because no one has asked. No one, after all, likes to take on the chairman of an important committee. It is possible that the committee is conducting an investigation already—it won't comment on that. If it is not, it should. This is one case where House members' natural reluctance to investigate one of their colleagues should be outweighed by their concern for upholding proper ethical standards and for the reputation of the House itself.

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And Mr. St Germain?

THE HOUSE ethics committee voted Thursday to begin a preliminary inquiry into the case of Rep. Dan Daniel (D-Va.). Well and good: Mr. Daniel accepted and did not disclose 23 free airplane trips back and forth to his district from Beech Aircraft Corp., although House rules forbid accepting a total of $100 or more a year in gifts from corporations with legislation before Congress and require disclosure of any gifts worth more than $250. During the same period, Mr. Daniel urged Congress to buy Beech's C12 for the Pentagon. Mr. Daniel has apologized on the floor of the House, has sent the company a check to pay for the rides, and has amended his disclosure forms. Still, the ethics committee should investigate and report, to clarify the rule and to help House members decide whether any further discipline is warranted.

We hope the committee's failure to announce at the same time any formal action in the case of Rep. Fernand St Germain (D-R.I.) does not represent anything more than a bit of delay. For facts alleged by Brooks Jackson and Tim Carrington in The Wall Street Journal raise a more serious question than anyone has alleged in Mr. Daniel's case. The question is whether Mr. St Germain, chairman of the House Banking, Finance and Urban Affairs Committee, has used his high position to enrich himself improperly.

These questions go to the heart of the integrity of the House and of the Democratic majority that elected Mr. St Germain to his chairmanship. The Banking Committee has jurisdiction over institutions that are necessarily closely regulated by government. Confidence in banks and savings institutions is essential to the operation of the economy, and in recent years that confidence has been shaken by the depositor runs and allegations of abuse of trust by insiders. The substantive responsibilities of a person in Mr. St Germain's position are as great as those of any member of Congress. If he is innocent of the charges, he deserves to be publicly cleared of them; confidence in his actions is at stake, as is fundamental fairness to the man. If it is established that he has undermined his ability to fulfill those responsibilities by attempting to enrich himself improperly, it would be a grave dereliction of duty for Congress not to take stern disciplinary action.

It is the ethics committee's responsibility to investigate the charges. Members of Congress are understandably reluctant to accuse their colleagues of misconduct. But surely they understand that misconduct by a member in a position of high trust, with pivotal responsibilities in a most sensitive regulatory area, must be either cleared or rebuked if the reputation of Congress generally, and of the majority party in the House in particular, are not to suffer harm.

WASHINGTON POST 9/22/85

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CommonCause

For Release: IMMEDIATE
Friday, September 13, 1985

For information: Virginia Sassaman

COMMON CAUSE CALLS FOR HOUSE ETHICS COMMITTEE

INVESTIGATIONS OF REPRESENTATIVES DANIEL AND ST GERMAIN

Common Cause today called on the House Ethics Committee to investigate recent allegations about Representatives Dan Daniel (D-VA) and Fernand St Germain (D-RI) to determine if House rules have been violated.

In separate letters to committee members, Common Cause raised the two cases, noting the following:

-- on September 10, 1985 the Richmond News Leader reported that Daniel, a senior member of the House Armed Services Committee, travelled "on an aircraft of a defense contractor" and "has not reported the travel on financial disclosure forms in recent years." House rules prohibit the acceptance of gifts of $100 or more from those having a direct interest in legislation before the Congress and require disclosure of gifts of transportation from others.

When asked if he knew whether he had complied with the gift limitation, Daniel told the Richmond News Leader, "I really don't, and the truth of the matter is, I don't care."

-- on September 11, 1985 the Wall Street Journal reported that Representative St Germain "has received lots of investment help from people and institutions that have benefited from his official actions" and listed a number of allegations concerning St Germain's private investments and his position as Chairman of the House Banking, Finance and Urban Affairs Committee.

The Code of Ethics for Government Service instructs Members never to accept "benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties."

Common Cause called for the Committee to investigate in both cases whether House rules had been violated and to issue a public report of their findings.

Copies of the two letters and the respective newspaper articles which raised the allegations are attached.

* * *

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common cause
2030 M STREET, N.W., WASHINGTON, D. C. 20036 (202) 833-1200

Archibald Cox
Chairman

Fred Wertheimer
Pre

John W. Gardner

ATTACHMENT III

September 13, 1985

The Honorable Julian C. Dixon
Committee on Standards of Official Conduct
HT-2 Capitol
Washington, D.C. 20515

Dear Chairman Dixon:

Allegations concerning Representative St Germain's private investments and his position as Chairman of the House Banking, Finance and Urban Affairs Committee appeared in the Wall Street Journal on September 11, 1985. This press report indicated that Rep. St Germain "has had lots of investment help from people and institutions that have benefited from his official actions."

The Code of Ethics for Government Service (72 Stat. Part 2, B 12, para. 5) instructs Members never to "discriminate unfairly by the dispensing of special favors or privileges to anyone," nor to accept "benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties."

The House Ethics Manual states that this provision would look to the "relationship between the receipt of benefits from a private source and the official duties or acts of a Member . . . as to any appearances of possible improprieties, undue influences, or breaches of the public trust in violation of this provision which, as noted by the House Committee on Standards of Official Conduct, works to 'prohibit conflicts of interest and the use of official position for any personal benefit.'"

Common Cause believes it is essential for the Committee on Standards of Official Conduct to initiate an investigation concerning the allegations made about Rep. St Germain to determine if House rules have been violated and to report publicly on its findings.

Sincerely,

Fred Wertheimer
President

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Freddy and his friends

Rep. Fernand J. "Freddy" St Germain, chairman of the House Banking Committee, is not the first member of Congress to enrich himself through conflicts of interest. It would be vain to hope that he would be the last. But if the House wants to be something more than a national laughing stock, it had better get about punishing him in ways that might deter others for at least a little while.

St Germain's conduct, as exposed this week by the *Wall Street Journal*, calls at the minimum for the House to reprimand or censure him and dump him from his chairmanship in the event that his traditionally indulgent Rhode Island constituents insist on re-electing him next year.

It would also seem to warrant a federal criminal investigation into his failure to report his ownership of substantial stock in Florida Federal Savings and Loan when he filed his financial disclosure form for 1984. When he finally disclosed it this year — after he knew the *Journal*'s reporters were on his case — he offered the ingenious excuse that "the acquisition was intended to be temporary." What stock speculations aren't?

ST GERMAIN'S deep involvement with Florida Federal and with its chief executive, Raleigh Greene, is all the more questionable because of St Germain's extensive legislative efforts in behalf of the thrift industry. When St Germain appeared here for Florida Federal's 50th anniversary celebration and office tower groundbreaking in January 1983, he boasted that his recently enacted deregulation bill would give savings and loans the power to compete against banks and brokerage firms in a full range of financial services. Was this because he truly believed in the bill? Or because his good buddy, Greene, had been cutting him into three promising Florida land deals and had helped him finance a condominium in Bayfront Tower?

The *Journal* also disclosed that certain Rhode Island banks lent him nearly the full purchase price and assumed most of the risk when St Germain bought five pancake restaurants with $1.3 million in mortgages. Were the banks so generous because they liked him? Or because they feared his wrath?

St Germain's bad judgment is proportionate to his power as a committee chairman, which is nearly absolute, and which he has used with definite partiality toward the thrifts. Despite criticism, he kept the chairmanship of the Financial Institutions Subcommittee after attaining the full committee chairmanship in 1981. It hardly needs to be said that it was wrong for St Germain's staff director to be pressuring federal banking regulators in support of Florida Federal's stock conversion and other matters involving the St. Petersburg institution. St Germain's subsequent purchase of Florida Federal stock looks especially questionable for that.

FOR HIS part, Greene told the *Journal* that he never asked St Germain to intercede with federal regulators. For *his* part, St Germain isn't saying much except to accuse the *Journal* of viewing his affairs "in the worst possible light." The best possible light wouldn't be any too good.

Greene did admit that he had invited St Germain into the Florida real estate deals. "It's like anything else," he told the *Journal*. "You sit down with your buddies and say 'Do you want in?' And you either say yes or nay." Give Greene credit for a candid commentary on certain forms of business practice, but not for his judgment in exposing himself and his institution to potential criticism. There's something wrong with the system when powerful bankers are "buddies" with the chairman of a congressional banking committee and cut him in on land deals not offered to the general public.

It's nice to know, however, that even St Germain has his limits. Notwithstanding his lucrative private banking deals, he doesn't accept honoraria for speaking at banking industry conventions. "You can be very independent when you don't take honoraria," he said. "I think that we (in Congress) should be able to survive on what we get."

They should and they do. The question is where they get it.

The St. Petersburg Times

9/13/85

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St Germain Defends Finances

PROVIDENCE, R.I., Sept. 11 (AP) — Representative Fernand J. St Germain criticized The Wall Street Journal today for reporting that he has received investment aid from people and institutions that have benefited from his actions as chairman of the House Banking Committee.

"I have made investments with the objective of providing for my family," the Rhode Island Democrat said in a statement. "For reasons best known to its reporters and editors, The Wall Street Journal has gone to great lengths to cast these investments in the worst possible light.

"I have scrupulously avoided any official actions on my part which would have created conflicts of interest in connection with these investments."

In a front-page article in today's issue, The Journal said it had analyzed Mr. St Germain's finances from his financial disclosure forms, interviews and records at the Securities and Exchange Commission and more than a dozen state and county offices.

Purchases of Real Estate

The newspaper reported that Mr. St Germain, who represents a mostly blue-collar district in eastern Rhode Island, had bought a $200,000 condominum at Newport, R.I., also in his district, and two Florida properties for nearly $240,000.

It said Mr. St Germain owns restaurants worth $1.9 million plus stocks, real estate and mutual funds valued between $325,000 and $840,000.

The Journal also said the Internal Revenue Service is investigating what that agency terms "abusive tax shelters" in which the Congressman has invested $120,000 for promised tax deductions of $408,000.

Mr. St Germain, 57 years old, said the article contained "unfair and unsupported innuendos," but he said he would not "engage in a drawn-out point-by-point argument."

The newspaper said the 13-term Congressman had bought $15,000 worth of stock in Florida Federal Savings and Loan after a top aide repeatedly phoned Federal regulators to check on the progress of the institution's application to issue the stock.

Mr. St Germain's chief of staff at the Banking Committee, Paul Nelson, said the calls had been made only to learn the status of the stock proposal.

Role of Thrift Executive

The Journal also said Raleigh Greene, president of Florida Federal, had arranged for Mr. St Germain to take part in several lucrative real estate deals.

Mr. Greene, who said he had never asked Mr. St Germain for help in Washington, confirmed that he had invited the Congressman to participate in three real estate investments that were not offered to the public.

The newspaper also said Mr. St Germain had obtained loans from two Rhode Island banks for amounts in excess of the purchase price of restaurants for which he secured no-money-down financing.

Mr. St Germain said he did no special favors for the banks, which lent him $1.3 million when his Congressional salary was $42,500 a year. "The loans were clearly good business for the financial institutions," he said.

The Journal also said court records in New York show that Mr. St Germain invested up to $120,000 in tax shelters and was promised write-offs totaling $408,344 during the first two years of the partnerships. The I.R.S. contends that the tax shelters were just a means to milk the tax system, not bona fide business ventures, the newspaper said.

New York Times Sept. 12, 1985

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P. J 9/19/85

ATTACHMENT III

9/19/85

Post urges probe of St Germain

By JOHN MULLIGAN
Journal-Bulletin Washington Bureau

WASHINGTON — The Washington *Post* yesterday called for an investigation into a newspaper report that Rep. Fernand J. St Germain of Rhode Island has become a millionaire with help from people and institutions that have gained from his actions as House Banking Committee chairman.

Any House member "should avoid more assiduously than Mr. St Germain seems to have done even the appearance of using his influence to enrich himself," the newspaper said in an editorial that called for a House ethics committee investigation.

The editorial specifically cited three elements in a *Wall Street Journal* report:

"... First, that Mr. St Germain bought five International House of Pancakes restaurants with $1.3 million in loans from Rhode Island banks, on terms that required him to put up little or no cash.

"Second (that St Germain) profited from real estate investments arranged by a Rhode Island developer who profited from federally subsidized housing programs Mr. St Germain helped obtain for the state.

"Third (that St Germain) has benefited from land deals in Florida arranged by a developer who chairs a savings institution regulated by the Banking Committee, and that a top St Germain staffer made calls to federal regulators about applications by the developer's firms."

St Germain aide Richard L. Maurano said that if the ethics panel decides "to look into something, they'll find that he's done nothing wrong. It's their call."

Maurano noted that St Germain will appear on a television interview show in Providence this weekend to discuss the matter.

The office of Rep. Julian C. Dixon, D-Cal, the ethics panel's chairman, did not answer a request for comment.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
National Republican Congressional	)	
Committee and	)	
Jack McDonald as treasurer,	)	**MUR 2116**
Republican National Committee and	)	
William S. McManus as treasurer,	)	
John A. Holmes, Jr.	)	

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
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STATEMENT OF REASONS

Commissioner Lee Ann Elliott
Commissioner Thomas J. Josefiak

I. INTRODUCTION

On October 23, 1987, the United States Court of Appeals for the District of Columbia held the Federal Election Commission's dismissal of MUR 2116 judicially reviewable and accorded individual Commissioners "an opportunity to say why DCCC's complaint was dismissed in spite of the FEC's General Counsel's contrary recommendation." Slip op. at 9. The court was concerned that the General Counsel's "recommendation to pursue the complaint [was] in fidelity to FEC precedent" and the Commission "may have slighted its own precedent and accorded similar cases dissimilar treatment, thereby proceeding on a course 'contrary to law.'" Id. at 2, 8-9.

The following statement sets out our reasons for voting against the staff recommendation in MUR 2116 and explains why our vote is, in fact, consistent with FEC precedent.

II. FACTS AND ISSUES PRESENTED

On December 20, 1985, the Democratic Congressional Campaign Committee ("DCCC") filed a complaint with the Commission asserting that the cost of a mailing paid by the National Republican

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Congressional Committee ("NRCC") should have been allocated to the NRCC's coordinated expenditure limit of 2 U.S.C. §441a(d). Section 441a(d)(3)(B) of the Act limits the allocable amount a political party may spend "in connection with the general election campaign[s]" of its congressional candidates.1/

The challenged mailing was sent within the congressional district of Democratic Representative Fernand St Germain. The mailing (Attachment I) discusses newspaper articles accusing Representative St Germain of using his congressional office for personal financial gain. The mailing urges Representative St Germain to disclose his personal finances and asks recipients to sign an enclosed petition urging the House Ethics Committee to investigate St Germain's finances.2/ The mailing was sent in late 1985 before any Republican announced a candidacy in the next year's primary. The mailing did not call for the election or defeat of any candidate, did not identify Representative St Germain as a candidate, did not identify any potential Republican opponent, did not explicitly refer to any future election or political campaign, made no mention of party affiliation and did not refer to voters or voting.

The complainant asserted the cost of the mailing is allocable to the NRCC's §441a(d) limit in accordance with Advisory Opinion 1985-14 ("AO 1985-14"), 1 Fed. Election Camp. Fin. Guide [CCH] ¶ 5819.

1/ 2 U.S.C. §441a(d)(3)(B) of the Federal Election Campaign Act provides in part: "The national committee of a political party...may not make any expenditure in connection with the general election campaign of a candidate...for election to the office of...Representative (which exceeds)...$10,000." The $10,000 limit is adjusted for inflation and was $21,810 in 1986.

2/ In response to this mailing, the signatures of 2,080 First Congressional District residents were sent to the Chairman of the House Ethics Committee urging an official investigation into St Germain's finances. G.C. Rept. Attachment 3 at 25. See Providence Journal, Feb. 18, 1986, at A7, Col. 2.

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(Attachment II) In AO 1985-14, a majority of the Commission stated that the cost of a mailing is subject to the §441a(d) limit if it depicts a "clearly identified candidate" and contains an "electioneering message." Id. at p. 11,185 (incorrectly citing AO 1984-15, 1 Fed. Election Camp. Fin. Guide [CCH] ¶ 5766).3/ In response, NRCC argued that the text of the mailing did not contain an "electioneering message" but merely repeated the newspaper reports, editorials and public comments on this issue. (See Attachment III)

The General Counsel's Report of May 16, 1986 argued the mailing contained an electioneering message "as a whole" and recommended the Commission find "reason to believe" a violation of §441a(d) occurred.4/ The Report summarized some general similiarities between this mailing and AO 1985-14, but also noted the mailing in AO 1985-14 contained an explicit partisan appeal and a reference to an election while the mailing at issue did not. G.C. Rept. at 6-7.

In considering the General Counsel's Report and Commission precedent in this area, the undersigned found no "electioneering message" in the challenged mailing. Accordingly, we voted against the Counsel's recommendation to allocate this expenditure against the NRCC's §441a(d) limit.

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3/ AO 1985-14 is the only advisory "precedent" that contains the words "electioneering message." Neither AO 1984-15 or 1978-46 use the words "electioneering message" or suggest that as a standard. AO 1978-46, in fact, contains the higher "express advocacy" threshold for evaluating expenditures. See note 7, infra.

4/ Even assuming this mailing contained an electioneering message, our counsel cited the wrong section of the statute since § 441a(d) cannot be violated unless a party exceeds its coordinated limit. At the time the Commission considered this complaint, the NRCC had made no coordinated expenditures against its $21,810 limit in this congressional district and the challenged mailing only cost $10,000. The correct recommendation would have been "reason to believe" a violation of §434(b)(4)(H)(iv) and §434(b)(6)(B)(iv) occurred for failing to allocate and report this mailing as a coordinated expenditure.

III. DISCUSSION

1. The Background of 2 U.S.C. §441a(d)

In 1974, Congress recognized that its campaign finance legislation provided too inadequate a role for the national parties. While parties could engage in issue-oriented discussions and party-building activity, their only means of directly supporting candidates was subject to annual contribution limits.5/ To correct this imbalance, § 441a(d) was added to give national and state party committees additional coordinated expenditure ability. See S. Rep. No. 689, 93rd Cong., 2d Sess 15 (1974), reprinted in the Legislative History of the Federal Election Campaign Act Amendments of 1974, 111 (GPO 1977); H.R. Rep. No. 1057, 94th Cong., 2d Sess. 59 (1976), reprinted in Legislative History of the Federal Election Campaign Act Amendments of 1976, 1053 (GPO 1977).

As enacted, § 441a(d) allows the parties to spend an additional 2¢ times a state's voting age population on behalf of their U.S. Senate candidates and $10,000 for each Congressional candidate. The expenditures Congress requires parties to allocate against this limit are those made "in connection with" their nominee's "general election campaigns." 2 U.S.C. §441a(d) Nowhere was § 441a(d) construed to limit the party's other disbursements which continue to be reported as

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5/ National party committees may only contribute $5,000 to their congressional candidates, just like any other multi-candidate political committee. Political party committees cannot, however, make independent expenditures on behalf of their candidates. 11 CFR 110.7(a)(5)and (b)(4). See Advisory Opinion 1980-119 2 Fed. Election Camp. Fin. Guide [CCH] ¶45561.

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"operating expenditures" and are obviously not subject to any dollar limit.6/ 2 U.S.C. §434(b)(4); Buckley v. Valeo, 424 U.S. 1, 39-59 (1976); AO 1975-87. In Buckley, the Supreme Court repeatedly said the Federal Election Campaign Act's restrictions on expenditures "impose direct and substantial restraints on the quantity of political speech." Buckley at 39. Restricting political communications "necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration and the size of the audience reached." Buckley at 19. See also FEC v. National Conservative Political Action Committee 470 U.S. 480 (1985); FEC v. Massachusetts Citizens for Life, Inc. ("MCFL") 107 S. Ct. 616 (1987).

It is in this context that the statutory allowance of § 441a(d) is applied. Accordingly, the Commission must clearly define those expenditures that are allocable to the coordinated limit to avoid improperly restricting a party's policy discussions, issue-oriented speech or party-building activity.

2. Commission Interpretation of 2 U.S.C. §441a(d)

The Commission has, in fact, clearly defined the "in connection with" language of § 441a(d) in separating a party's issue-oriented speech and party-building activity from its coordinated

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6/ Under the Act, a national party committee must report all its disbursements over eight categories. See 2 U.S.C. § 434(b)(4); 11 CFR 104.3(b)(1), and FEC Form 3X. The "operating expenditures" category includes disbursements for polling, travel, phone banks, catering, media, rent, personnel, overhead, fundraising, training seminars, registration, voter education, get-out-the-vote drives and other day-to-day costs that are not made on behalf of a clearly identified candidate and cannot be directly attributable to that candidate. See 11 CFR 104.3(b)(3)(i), 106.1(c), and 110.8(e).

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expenditures. An expenditure will only be allocable to the § 441a(d) limit if it contains a "clearly identified candidate" and an "electioneering message." AO 1985-14. Although the statute speaks of coordinating expenditures with the "general election campaigns" of "candidates," the Commission does not require the expenditure to be coordinated with the candidate; does not require the party making the expenditure to have a general election nominee; and will allocate expenditures made before the primary. AO 1984-15; AO 1985-14. The only operative standards for determining if an expenditure is "in connection with a general election campaign," therefore, is if it contains a "clearly identified candidate" and an "electioneering message."

To describe its "electioneering message" standard, the Commission borrowed the Supreme Court's language in United States v. United Auto Workers, 352 U.S. 567 (1957). In Auto Workers, the Court gave meaning to the pre-FECA prohibition on corporate and labor activity "in connection with" federal elections by holding expenditures "designed to urge the public to vote for a certain candidate or party" are prohibited while expenditures that "simply state the record of particular candidates on [the] issues" are permitted. Id. at 587, 592. The Commission has adopted this analysis in deciding whether a political party's expenditure contains an electioneering message "in connection with" a general election campaign. The Commission will limit those expenditures "designed to urge the public to vote for a certain candidate or party" as coordinated expenditures and not limit expenditures which

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"simply state the record of particular candidates" since they are operating expenditures not subject to any dollar limit.7/ See AO 1984-15; 11 CFR §104.3(b)(3); 106.1(c).

In its advisory opinions and enforcement matters, the Commission has established what a communication must contain to become an "electioneering message." An electioneering message is a communication containing a partisan appeal referring to voters or voting, political contributions, or an upcoming political campaign or election. AO 1984-15;

7/ A different standard for allocating expenditures may be the Supreme Court-approved "express advocacy" threshold instead of the Commission-created "electioneering message." Generally, the constitutional deficiency of expenditure limits can only be avoided by limiting their reach to words of "express advocacy." Buckley at 41-44, and n.52. In clarifying that party committees have contribution limits but cannot make independent expenditures like other political committees, Congress recognized that the parties will have their own special coordinated expenditure limits. 120 Cong. Rec. S5413-14 (daily ed. April 8, 1974) (remarks of Sens. Clark and Brock) reprinted in Legislative History of Federal Election Campaign Act Amendments of 1974, 419-20 (GPO 1977). In effect, coordinated expenditures are like independent expenditures with a limit. See Buckley at 58 n.66 (favorably comparing coordinated expenditures with regulation of independent expenditures salvaged by the "express advocacy" threshold).

Further, the statute prohibiting corporate and labor activity "in connection with" federal elections from which the "electioneering message" standard was derived, Auto Workers at 587; AO 1985-14, has recently been interpreted by the Supreme Court. FEC v. Massachusetts Citizens for Life, Inc. ("MCFL"), 107 S. Ct. 616, 623 (1986). In MCFL, the Court stated "[w]e therefore hold an expenditure must constitute 'express advocacy' in order to be subject to the prohibition of §441b". Id. See also Orloski v. FEC, 795 F.2d 156, 166-67 (1986); AO 1978-46. If the "in connection with" language has the same meaning under §441a(d) as it does under §441b, then "express advocacy" could be the threshold for allocating expenditures. There is no allegation that the mailing in this case contains any "express advocacy." G.C. Rept. at 9.

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AO 1985-14.8/. Obviously, no particular one of these objective factors must be present, but at least one factor must be present to prove an expenditure is made "in connection with" a general election, attaining the legal status of a coordinated expenditure and requiring allocation to the § 441a(d) limit.9/ Since precedent demands we use these objective criteria for finding the presence of an electioneering message, we cannot force allocation of an expenditure that does not contain even one of these electioneering messages.

3. Application of Commission Precedent

The mailer in this case does not contain any electioneering message and cannot, consistent with Commission precedent, be allocated against the party's §441a(d) limit. The text of the mailer contains no references to voters or voting, no mention of any upcoming election or political campaign, no mention of political contributions and no partisan appeals. There are simply no electioneering words present.

In contrast, the mailer in AO 1985-14 contained an electioneering message by repeated references to a particular congressman as a "Republican" and a listing of his campaign contributions. This, or any other electioneering message established by the Commission, is not present in the NRCC's mailing. In fact, the NRCC's mailing bears a greater resemblance to the advertisements in AO 1985-14 that were

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8/ We have applied this standard to a number of enforcement matters still subject to the confidentiality provision of the Act. 2 U.S.C. § 437g(a)(12).

9/ Presumably, a party committee could also categorize such an expenditure as an in-kind contribution subject to the $5,000 contribution limit.

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found to not contain an electioneering message. In those advertisements, the DCCC generally critized the deficit issue and "your Republican congressman's" mismanagement of the economy. The Commission concluded that these party-building or issue-oriented ads contained no electioneering message and were not allocable to § 441a(d). (See Attachment II). See also AO 1984-15.

Nothing in the text of the NRCC mailer can reasonably be read to "urge the public to elect a certain candidate or party." Autoworkers at 587. In fact, the only action this mailer urges the public to take is to "sign the attached petition" calling for a House Ethics Committee investigation. Urging the signing of this petition is clearly an issue-oriented act. To label this petition drive as electioneering corrupts the text of the mailing and this important public issue of officeholder ethics.10/ In our opinion, interpreting the circulation of this petition as regulated campaign finance activity extraordinarily expands the scope of the Act and undermines the Congressional intent behind § 441a(d).

The mailer's statement that "There's only one solution: Congressman St Germain must come clean by fully disclosing his taxes and finances," (emphasis supplied) also does not urge the public to vote for any candidate or party. In fact, this plea seems to preclude any election-related activity by saying the only action necessary is demanding the disclosure of St Germain's tax returns and finances and not his resignation or defeat.

10/ The NRCC's call for an investigation and the disclosure of St Germain's tax returns are identical to the reports and editorials of The Wall Street Journal and the Providence Journal Bulletin and was vociferously demanded by Common Cause. (See Attachment III). While one of NRCC's goal's may be the election of Republicans to Congress, it is not their only goal. Those who are familiar with the national party committees know they are concerned with the reputation and effectiveness of government and they often enter the constructive public debate about the issues of the day.

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This is quite unlike the mailer in AO 1985-14 which linked its message directly to an election. In fact, the General Counsel conceded that the mailer in this case "does not directly refer to an election" while the mailer in AO 1985-14 "includes references to an election by its inclusion of a list of campaign contributions...to the named representatives."11/ G.C. Rept. at 7. Our Counsel also notes the mailer in this case "does not make reference to any political party" while the mailer in AO 1985-14 made repeated references to "republicans." Id. These essential factual differences between the mailers create a legal distinction: the mailer in AO 1985-14 contained an electioneering message while the mailer in this case does not.12/

11/ Our Counsel did, however, point out irrelevant similarities between the two mailers: each 1) was prepared by a national committee of a political party, 2) identified a specific congressman, 3) criticized the record of that congressman, and 4) was distributed to residents within that congressman's district.

First, it is assumed that we are dealing with party committee expenditures or we would not even be discussing the allocability of these expenditures. Second, identifying a specific congressman by name only relates to the issue of "clearly identified candidate" not "electioneering message." Third, nothing in AO 1985-14 or any other Commission precedent suggests criticizing an incumbent's record triggers §441a(d) allocation: the mere discussion of officeholders and their votes and conduct, without any nexus to campaigns or elections, is a fully understood and zealously protected constitutional right. Fourth, AO 1985-14 cannot be read to say that even attacking an incumbent's record in his home district is automatically subject to §441a(d) unless that communication also contains an electioneering message. Resting a case for allocability on these irrelevant similarities ignores the plain wording of the statute, Commission precedent and, most importantly, what the mailers actually say.

12/ Although this was not mentioned in the General Counsel's Report, the mailing also repeats, word for word, a Providence Journal editorial which lists other Rhode Island "public officials" who have voluntarily "given the public a complete financial accounting of themselves." (Attachment III, p. 5). Presumably, our Counsel correctly realized this was an issue-oriented comparison and not an "electioneering message" since it was not included in their report.

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Therefore, following the General Counsel's recommendation in this case would not be following Commission precedent.13/ Accordingly, we are the ones acting "in conformity with FEC precedent" by voting there is no "reason to believe" this mailing contained an electioneering message. Our votes are not incompatible with the allegedly low threshold of "reason to believe" necessary to commence an investigation under the Act. 2 U.S.C. § 437g(a)(2). The General Counsel did not recommend any investigation in this case since the Commission had all the facts necessary to make its legal determination whether this mailer contained an electioneering message. See G.C. Rept. at 16.

4. **Rejecting New Approaches to Electioneering**

Counsel provides three other insufficient arguments for finding an "electioneering message" in a new or unprecedented way. First, Counsel states that "(t)he mailer's statement about ridding the government of corruption is a reference to an election in that one way to remove Congressman St Germain would be to vote him out of office." G.C. Rept. at 7. Not only does this quote slaughter the

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13/Counsel's disagreement with our votes is of no significance for the Commission is not "required to accept the advice of some members of [its] legal staff", since "[t]he Commissioners are appointed by the President to administer the agency, the agency's staff is not." San Luis Obispo Mothers for Peace v. NRC, 751 F.2d. 1287, 1327 (D.C. Cir. 1984) (language from Section IV of opinion, the court later vacated Section III-B of the decision for en banc consideration, 760 F.2d 1320.) See also Stark v. FEC, Civil Action No. 87-1700, Slip op. at 10. (DDC Opinion filed February 8, 1988) (Jackson, J.) ("This court reads DCCC to require that the same deference be accorded the reasoning of "dissenting" Commissioners who prevent Commission action...as is given the reasoning of the Commission when it acts affirmatively.")

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true text of the mailing14/ but it advances a standard of electioneering by inference or clairvoyance. Such a review is completely contrary to objectively reading the text of a mailing for an electioneering message. It is unthinkable to hold a speaker against an expenditure limit just because of what a listener might intiutively deduce from a message. The allocability of this mailer will depend on what it says not by the varied "understanding" potential recipients may have. Speakers are not at the mercy of their listeners and are not required to "hedge and trim" their remarks. Such a requirement would offer "no security for [the] free discussion" of an officeholder's conduct. Buckley at 42-43 quoting Thomas v. Collins, 323 U.S. 516, 535 (1945); see also Auto Workers at 595-596, (Douglas J., dissenting).

Second, Counsel makes the stunning statement that "AO 1985-14 does not state what aspect of the proposed mailer constituted an electioneering message. It may be that the mailing as a whole conveyed an electioneering message". G.C. Rept. at 7. (emphasis added). Proceeding on this "as a whole" theory, Counsel suggests "[s]imilarily, the Rhode Island Citizens mailing conveys an electioneering message thus constituting a section 441a(d) expenditure by NRCC" Id.

This "as a whole" theory has absolutely no foundation in the text of AO 1985-14, or the Commission's deliberation of that opinion, or the Commission's interpretation of the Act. In AO 1985-14, the Commission undertook a detailed review of a variety of radio and television broadcasts and mailings. In some cases, the Commission held

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14/ Absolutely nowhere in the text of this mailing is there any mention of removing St Germain by any method. The mailing explicitly states the way to rid the government of corruption is to force disclosure of taxes and finances, not to vote someone out of office.

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a specific communication would be allocable because it contained an electioneering message. In other examples the Commission found no allocation necessary since the expenditure was issue-oriented or party-building activity. In one case, the Commission was equally divided on the allocability of an expenditure. In no instance were these decisions made on the basis of an "as a whole" analysis, and to suggest such is to engage in true revisionism.

Further, to allocate expenditures on an "as a whole" basis would produce an incomprehensible trail of standardless decisions contrary to the purpose of the Act and inconsistent with the parties right to speak. "As a whole" analysis is wholly subjective and would create ad-hoc, after-the-fact decisions. An ever-shifting majority of Commissioners would review each message "as a whole" and decide whether it conveyed an electioneering message to them, in their own individual hearing or reading. This approach would destroy the legal status of "electioneering messages" and would encourage the Commission to abandon its reasoned application of precedent in favor an entirely subjective and arbitrary review of the facts. This approach must not be followed since the party committees must know in advance of making an expenditure whether it contains an allocable electioneering message. See Buckley at 41 n.48 quoting Grayned v. City of Rockford, 408 U.S. 104, 108-109 (1972) (vague laws not only "trap the innocent by not providing fair warning," they foster "arbitrary and discriminatory application" and inhibit protected expression by inducing citizens to "steer far wider of the unlawful zone" than necessary).

Third, there is no justifiable basis for abandoning our "electioneering message" precedent and forcing allocation of this expenditure for some other reason. For example, inputing a "political purpose" to an expenditure will not, in itself, cause that expenditure

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to be allocated to the § 441a(d) limit. A political purpose only requires a party to report the expenditure under 2 U.S.C. § 431(9)(A). In fact, the Act presumes that every federal expenditure by a political party already has or results from a political purpose--which is why all federal party expenditures are reported.15/ Merely believing that an expenditure has a "political purpose" is an insufficient reason to require allocation of that expenditure against the 441a(d) limit. Accordingly, something more than "political purpose" must be proven to elevate a communication into an "electioneering message" under §441a(d).

The allocation question is also not answered by asking whether this communication, or the signing of petitions, or calling for the disclosure of St Germain's tax returns will have an adverse impact on St Germain in the general election. As the Supreme Court cautioned in Buckley, "the distinction between discussion of issues and candidates and advocacy of election or defeat may often dissolve in practical application...incumbents are intimately tied to public issues...(and) campaigns themselves generate issues of public interest." Buckley at 42. Accordingly, the Commission must not imply election-related intent to every criticism of an incumbent or speculate on the possible impact someone's speech may have on voting.16/ See, e.g., G.C. Rept.

15/ A party committee must report its federal disbursements to the Commission as either contributions, operating expenditures, transfers, loans, loan repayments, offsets, other disbursements or coordinated expenditures. 2 U.S.C. § 434. See FEC Form 3X.

16/ While we acknowledge this mailing could have an election-related effect, we cannot assume it. Nor can we assume what that effect would be since disclosing his finances may help St Germain's campaign by "clearing the air" as the mailer suggests. Accordingly, forcing allocation by subjectively guessing the intent, effect or impact of a person's speech is unreliable and inferior to objectively reading what is actually said.

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Attachment I at 19. The Commission must objectively look at the words of a communication and apply settled factors of "electioneering messages." To do otherwise replaces an objective review of the message itself with a subjective critique of the motivation of the speaker. See FEC v. Furgatch, 807 F.2d 857, 863 (9th Cir.) ("to fathom [the speaker's] mental state would distract us unnecessarily from the speech itself") cert. denied, 108 S. Ct. 151 (1987).

As we have stated, our analysis and votes are consistent with the rule of law established in AO 1985-14; but the facts of these two cases are too different to command the same result17/. We believe the General Counsel improperly applied the law from AO 1985-14 and reached the wrong conclusion. We also believe the complainant has read something into AO 1985-14 that is not there or interprets that opinion well beyond the limits of its facts18/.

IV. CONCLUSION

The discussion of issues and officeholders is an integral part of our system of government. So important is this right that the "First Amendment affords the broadest possible protection to such

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17/ It is no accident that the facts are so different between these two cases since the NRCC mailer was prepared and sent only months after the Commission's decision in AO 1985-14. The NRCC was able to use AO 1985-14 as fresh precedent to avoid having to allocate their mailer by making sure its text contained no electioneering message as defined by the Commission.

18/ The complainant knows the Commission rejects its expansive interpretation of AO 1985-14 since one month after this complaint was filed, the complainant urged the Commission in a rulemaking comment to abandon the majority decision in AO 1985-14 and instead focus on the "intent" or "purpose" behind a party's expenditure. See comments of the Democratic Senatorial and Congressional Campaign Committees, January 17, 1986, page 7, to a Commission Notice of Inquiry. 50 Fed. Reg. 51,535 (Dec. 18, 1985.)

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In the Matter of	)	
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National Republican Congressional Committee and Jack McDonald, as treasurer, Republican National Committee and William J. McManus, as treasurer, and John A. Holmes, Jr.	)	MUR 2116

STATEMENT OF REASONS

Commissioner Danny L. McDonald
Commissioner John Warren McGarry

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that expenditures made by national party committees in connection with the general election campaign of candidates for federal office are subject to certain limits. The primary question before the Commission in Matter Under Review ("MUR") 2116 was whether there was "reason to believe" expenditures made by the National Republican Congressional

Committee ("NRCC") for a mailing, targeted to constituents of Democratic incumbent Representative Fernand St Germain of Rhode Island's First Congressional District, constituted expenditures which had not been properly allocated under the Act's limits. Based on prior Commission rulings, it is our opinion that the NRCC mailer was such an expenditure, and that there plainly was reason to believe NRCC violated the Act by failing to allocate the expenditure under the statute's limits.

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I.

In 1974, Congress passed amendments to the Federal Election Campaign Act of 1971. Through one of its provisions, now codified at 2 U.S.C. §441a(d)(3), the 1974 legislation allowed the national and state committees of the political parties to make expenditures in connection with the general election campaigns of the parties' candidates, but such expenditures may

not exceed certain specific dollar limitations. 1/ In addition, the Act requires that political committees separately report all disbursements made under section 441a(d) to aid in monitoring adherence with the limits. 2 U.S.C. §434(b)(4)(H)(iv).

Because of the presumptive coordination that exists, "party committees are considered incapable of making 'independent

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1/ Specifically, the Act provides:

(3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds --

(A) in the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of --

(i) 2 cents multiplied by the voting age population of the State (as certified under subsection (e) of this section); or

(ii) $20,000; and

(B) in the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner of any other State, $10,000.

For the 1986 election cycle, the amount that the national party committee could expend under §441a(d)(3) on behalf of a typical House campaign was $21,810, based on a cost-of-living adjustment under 2 U.S.C. §441a(c). The state party could expend a like amount. As is often the practice of both major parties, the congressional campaign committee of the party could be authorized by the national and state party committees to expend their respective §441a(d)(3) allowance on their behalf. See FEC v. Democratic Senatorial Campaign Committee, 454 U.S. 27 (1981)("FEC v. DSCC").

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expenditures' [which are not limited] in connection with the campaign of their party's candidates." FEC v. DSCC, 454 U.S. at 28-29 n.1. See 11 C.F.R. §§110.7(a)(5) and (b)(4). 2/ The right to make §441a(d) expenditures connected with a general election (so called "coordinated expenditures") is an exception for political party committees permitting them to engage in certain activity that would otherwise result in a contribution to the

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2/ It should further be noted that the qualification set forth in the "independent expenditure" reporting provisions of 2 U.S.C. §434(b)(6)(B)(iii) and (c) -- that the independent expenditure must "expressly advocate the election or defeat of a clearly identified candidate--" has no applicability here. See 2 U.S.C. §431(17). Rather, section 441a(d)(3) limits the "expenditures" which the national committee of a political party may make "in connection with" a federal election. Section 431(9)(A)(i) defines "expenditure" to include:

> (i) any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office;

Since the definition of "expenditure" makes no reference to the "express advocacy" standard contained in §431(17), an expenditure may be subject to the §441a(d)(3) limits even though it does not contain express advocacy.

Section 441a(d)(3) was not intended to be limited to expenditures for express advocacy. Congress enacted the express advocacy standard as part of the Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475 (1976) in response to the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1 (1976). In Buckley, the Supreme Court found it unconstitutional to impose a statutory ceiling on independent expenditures. In so holding, however, the Court differentiated between genuine independent expenditures and "prearranged or coordinated expenditures amounting to disguised contributions," which could be constitutionally regulated. Buckley, 424 U.S. at 46-47. The legislative history of the amendment shows that the purpose of 2 U.S.C. §431(17) was to codify this distinction drawn by the Supreme Court. H. R. Conf. Report No. 1037, 94th Cong. 2d Sess. 38 (1976). Section 431(17) and its "express advocacy" standard was never intended to amend the §431(9)(A)(i) definition of expenditure as that term is used at §441a(d)(3).

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candidate with respect to whom the expenditure was made. See H.R. Rep. No. 94-1057, 94th Cong., 2d. Sess. 59 (1976). 3/

II.

On December 20, 1985, the Democratic Congressional Campaign Committee ("DCCC") filed a complaint with the Federal Election Commission against the National Republican Congressional Committee, the Republican National Committee and John A. Holmes, Jr. Among other things, the complaint stated that the NRCC, through the Rhode Island Citizens for Accountability in Government, sent $10,000 worth of mailings to Representative St Germain's congressional district harshly critical of the Representative's personal finances and conduct in office. According to materials supplied with the complaint, the

3/ The §441a(d) coordinated expenditure allowance is considerably larger than the allowable contribution limit that would otherwise apply for a House race ($5,000 for the general election if the party committee qualifies as a multicandidate committee under 2 U.S.C. §441a(a)(2)). Congress struck a reasonable balance between the need to encourage party activity and the need to prevent parties from becoming a vehicle for evading the limits on contributions to candidates. Without the limits on party spending, a person could easily effect support on behalf of particular candidates in excess of the limits of 2 U.S.C. §441a(a)(1)(A) or (2)(A) by contributing not only to the candidates but also to party committees likely to spend on behalf of such candidates. Limits on party spending help effectuate the underlying contribution limits of the Act by reducing the opportunity to assure additional candidate support through the parties.

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"Accountability in Government" group consisted solely of two "local GOP activists." MUR 2116, General Counsel's Report at Attachment 1, p. 16. The complaint alleged that the NRCC had violated 2 U.S.C. §441a(d)(3) by failing to allocate as a coordinated party expenditure the amounts spent for certain communications to the Representative's congressional district.

One of these communications was a mailer sent to Representative St Germain's congressional district. In full, the mailer stated:

> Dear Taxpayer:
>
> You may have heard that our Congressman, Fernand St Germain, has been accused of some very serious charges.
>
> According to the Wall Street Journal, The Providence Journal Bulletin, and other respected newspapers. Congressman St Germain has amassed a multimillion dollar personal fortune by using his public position to help wealthy investors.
>
> It's time to clear the air.
>
> That's why Rhode Island Citizens for Accountability in Government are asking Congressman St Germain to disclose in detail his financial records and make available to the public his tax returns.
>
> Unfortunately, St Germain has refused. And that's bad because the people of Rhode Island have a right to know if our Congressman is telling the truth.
>
> We also have a right to know if St Germain is trying to hide something.
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> In past years, public officials of both political parties have given the public a complete financial accounting of themselves.
>
> Some who come quickly to mind are Richard Israel when running for Attorney General, John

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> Hawkins for U.S. Senate, Joseph Garrahy for Governor, Vincent Cianci, Jr. for Mayor of Providence, and incumbent Mayor, Joseph Paolino, Jr.
>
> If they found this course suitable, why not Congressman St Germain?
>
> Just at a time Rhode Island citizens are demanding our leaders to be honest and above reproach, we cannot afford to have this dark cloud hanging over our heads.
>
> There's only one solution: Congressman St Germain must come clean by fully disclosing his taxes and finances. To do otherwise would bring an end to our efforts to rid our government of corruption and those who seek personal gain.
>
> That's why we--Rhode Island Citizens for Accountability in Government--urge you and other members of your household to sign the attached petition and mail it to us immediately.
>
> The petition asks the U.S. House of Representatives' Ethics Committee to officially investigate these serious charges and further demands that St Germain publicly disclose his taxes and finances.
>
> The people of Rhode Island deserve to know the truth. The time for answers is now.

(emphasis in the original). Enclosed with the mailing were additional materials stating in headlines "Tell us the truth, Congressman St Germain" (emphasis in the original) and "Only you, Congressman, can set the record straight." One enclosure, in large, bold lettering, simply read "It's time to clear the air..."

The Office of General Counsel prepared a report for Commission consideration that contained a factual and legal analysis of the allegations presented in the DCCC complaint. Based upon Commission precedent, the General Counsel recommended

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that the Commission find "reason to believe" the NRCC had violated 2 U.S.C. §441a(d). A motion to adopt the General Counsel's recommendation failed to secure the four affirmative votes necessary to proceed with an investigation into the matter. 2 U.S.C. §437g(a)(2).4/ Three Commissioners supported the recommendation 5/, two Commissioners opposed the recommendation, and one Commissioner abstained.

III.

This is not a complicated case. The Commission has clearly articulated the proper mode of analysis for determining whether disbursements count against the expenditure limitations of 2 U.S.C. §441a(d). Advisory Opinion 1985-14, 1 Fed. Elec. Camp.

4/ By a vote of 6-0, the Commission agreed with the General Counsel's recommendation to find no reason to believe that RNC and NRCC had violated 2 U.S.C. §441d. The complaint had alleged that respondents should have included a disclaimer on the mailing stating who had paid for the mailing. The statute in question, however, only requires such a disclaimer on general public political communications "expressly advocating the election or defeat of a clearly identified candidate" or soliciting contributions. By a vote of 6-0, the Commission also agreed with the General Counsel's recommendation to find no reason to believe that John A. Holmes, Jr. had violated 2 U.S.C. §432(e)(1). The complaint had charged, without substantial evidence, that Mr. Holmes had authorized some of the spending at issue and failed to designate in writing a political committee within 15 days after becoming a candidate. Under the statute, however, a person only becomes a "candidate" by receiving more than $5,000 in contributions or making more than $5,000 in expenditures, or by giving consent to another person to do so. 2 U.S.C. §431(2).

5/ The three Commissioners were Commissioners McDonald, McGarry and Harris. Commissioner Harris is no longer with the Commission.

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Fin. Guide (CCH) ¶ 5819 (1985); Advisory Opinion 1984-15, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5766 (1984). 6/ The established precedent is not confusing, and we believe that had it been faithfully applied, there would not be the current controversy.

A.

In Advisory Opinion 1984-15, supra, the Commission applied §441a(d) to a proposed undertaking by the RNC to produce an advertising program critical of Democratic candidates prior to and after the 1984 nomination of a Democratic candidate for President. The ads planned to feature the image of one of the current Democratic presidential candidates along with that candidate's statements regarding such issues as "the budget deficit or governmental morality." Id. Each advertisement would conclude with a visual audio appeal to "Vote Republican." Id.

The Commission concluded that the limitations of 2 U.S.C. §441a(d) would apply because "[t]he clear import and purpose of these proposed advertisements is to diminish support for any Democratic Party presidential nominee and to garner support for whoever may be the eventual Republican Party nominee." The Commission observed that expenditures may be made with respect to

6/ The courts have long viewed the Commission's advisory opinion process as a "prompt means of resolving doubts with respect to the statute's reach." Martin Tractor Co. v. Federal Election Commission, 627 F.2d 375, 384 (D.C. Cir. 1980), cert. denied, 449 U.S. 954 (1980) (emphasis added).

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the general election before the date of the primary election or nomination and noted that "nothing in the Act, its legislative history, Commission regulations, or court decisions indicates that coordinated party expenditures must be restricted to the time period between nomination and the general election." Id.

In Advisory Opinion 1985-14, supra, the issue was whether expenditures for broadcast advertisements or mailings proposed by the Democratic Congressional Campaign Committee were subject to the §441a(d) limitations. DCCC stated that it planned to begin a program involving criticism of the records of individual Republican members of the House of Representatives and of the activities of Republican members of Congress as a class. According to the advisory opinion request, some of the Republican members might not be announced candidates for the election at the time the DCCC advertisements were to run.

One of these proposed communications was a mailing which the DCCC planned to send to the home district of certain Republican congressmen. Addressing by name specific Republican incumbents, the mailing stated, "The wave of the future could be an oil spill if Congressman X has his way!" Next to a picture of a giant oil-derrick in the ocean spoiling a beachfront view was a list of the named congressman's contributions from the oil industry. On the back cover, the proposed text stated, "Don't be fooled by

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Republican rhetoric. Save our coastal environment." The back cover concluded, "Let Congressman X know how you feel." In some scripts, the text added the words "Vote Democratic." DCCC indicated that its "proposed program [including the mailing] is for the purpose of influencing the 1986 election process and that these activities will be scheduled for [April] and for September 1985." Id.

In considering the proposed mailer, the Commission specifically noted that "Congressmen will be identified by name," that the text criticizes the position of those identified Republican Congressmen on certain issues, and that the mailer would be distributed to "part or all of the district represented by the identified Congressman." Id. Citing Advisory Opinion 1984-15, the Commission stated that "the limitations of §441a(d) would apply where the communication both (1) depicted a clearly identified candidate and (2) conveyed an electioneering message." Id. The Advisory Opinion further stated that "electioneering messages include statements 'designed to urge the public to elect a certain candidate or party.'" Id. quoting United States v. United Auto Workers, 352 U.S. 567, 587 (1957) (emphasis added). The Commission did not require in this advisory opinion and, indeed, has never required that a Section 441a(d)(3) expenditure

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"expressly advocate" the election or defeat of a candidate. See pages 4-5, supra. 7/

The Commission concluded that external factors such as the context in which the communication was made, in addition to the actual text of the communication, determine whether a particular communication conveyed an electioneering message. Applying this test, the Commission concluded that "DCCC's expenditures for producing and disseminating the mailer either with or without the Vote Democratic statement will be subject to the Act's limitations and attributable pursuant to 11 C.F.R. 106.1." (emphasis added). Id.

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7/ Nothing in the Supreme Court's recent opinion in Federal Election Commission v. Massachusetts Citizens for Life, Inc., __ U.S. ___, 107 S. Ct. 616 (1986)("MCFL") changes this result. In an opinion issued six months after the Commission completed MUR 2116, the Court found that in order to fall within the prohibitions of 2 U.S.C. §441b, certain independent expenditures by MCFL must contain "express advocacy." MCFL should not be read for the proposition, however, that the term "expenditure", as defined at §431(9)(A)(i) and used at §441a(d)(3), has been judicially amended to require "express advocacy." See pages 4-5, supra.

Indeed, the Court's opinion in MCFL is readily distinguishable from MUR 2116. MCFL's expenditures were "independent"; they were not made in "cooperation or consultation, with" any candidates or their authorized committees. See 2 U.S.C. §431(17). In MUR 2116, however, the expenditures were not independent; the Supreme Court has specifically recognized that "party committees are considered incapable of making 'independent expenditures.'" FEC v. DSCC, 454 U.S. at 28-29 n. 1.

B.

The mailer proposed by the Democratic Congressional Campaign Committee in Advisory Opinion 1985-14 is materially indistinguishable from the mailing involved here. Based upon this clear precedent, we believe that the mailer funded by the National Republican Congressional Committee in MUR 2116 is likewise subject to the §441a(d) limitation.

(1)

In accordance with the precedent established in Advisory Opinion 1985-14 as well as Advisory Opinion 1984-15, the General Counsel recommended that the Commission find reason to believe that the NRCC violated 2 U.S.C. §441a(d). The General Counsel correctly recognized the many clear similarities between the DCCC mailer in Advisory Opinion 1985-14 and the Rhode Island Citizens mailer funded by the NRCC in MUR 2116:

> The Rhode Island Citizens mailer identifies by name a specific Democratic representative, Fernand St Germain, just as the DCCC proposed to name a specific Republican Congressman in its AO request. Both mailers criticize the records of the representative. The Rhode Island Citizens mailer criticizes Representative St Germain for allegedly using his public position to help wealthy investors and thereby amass a multimillion dollar personal fortune. The DCCC mailer criticizes a named representative for his views on the coastal environment and the oil industry. The Rhode Island Citizens organization distributed its mailer to Representative St Germain's first congressional district constituents, just as the Commission assumed the DCCC would disseminate its mailer to part or all of the district represented by the identified Congressman.

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MUR 2116, General Counsel's Report at 6. The General Counsel might have also mentioned the similarity of timing in the distribution of the two mailers. In Advisory Opinion 1985-14, DCCC planned to distribute the proposed mailer in April and September, 1985. The NRCC-funded mailer was distributed to Representative St Germain's district in December, 1985 -- even nearer to the 1986 election than the DCCC mailer. 8/

As commonly happens in the comparison of any two matters, there were differences in the factual situations presented by Advisory Opinion 1985-14 and MUR 2116. The General Counsel specifically noted that the mailer described in Advisory Opinion 1985-14 contained the word "Republican" and a list of campaign contributors to a named representative while the mailer in MUR 2116 did not. These are, however, distinctions without a difference.

With respect to the first suggested difference, Advisory Opinion 1985-14 required only that there be a clearly identified candidate; it did not require that there be a clearly identified political party. The Advisory Opinion tracked the statutory

8/ If the NRCC had any doubts regarding the plain applicability of Advisory Opinion 1985-14, it could have requested an advisory opinion on the matter. The Commission would have then been required to make such a request public, to accept public comments and to issue a public opinion. Instead, the NRCC proceeded to channel money to a group with an innocuous name, the Rhode Island Citizens for Accountability in Government. This group, consisting of two local Republican Party activists and apparently in consultation with the NRCC, put out the mailer in its own name. There was no mention of the NRCC on the mailer, even though the NRCC seems to have provided the funding and cleared the text.

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language which speaks in terms of "expenditures in connection with the general election campaigns of candidates for Federal office." 2 U.S.C. §441a(d)(1) (emphasis added). In both Advisory Opinion 1985-14 and MUR 2116, there is a clearly identified candidate. If the mailer in MUR 2116 had not contained a reference to a clearly identified candidate, and had only contained a reference to a political party, the disbursement made for such a mailer would not be allocable under §441a(d)(3). However, the mailer in MUR 2116 attacked a clearly identified candidate and, thus, the expenditure for the mailer is allocable under §441a(d)(3).

Moreover, there is clearly no requirement that the name of a major political party must be present in order for there to be an "electioneering message." Under that construction, a party-funded mailer could avoid being considered an expenditure subject to limitations so long as it avoided the magic word, i.e., the name of the opposing political party. Certainly, such an absurd result has no foundation in either the Act or the legislative history.

With respect to the second difference posed by the General Counsel we similarly note that there is nothing in Advisory Opinion 1985-14 which requires that there be an explicit reference to political campaigning in the mailer at issue. However, to the extent that there was a reference to political campaigning in Advisory Opinion 1985-14, i.e., a listing of campaign contributors, there was a like reference in MUR 2116.

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The NRCC funded mailer specifically alluded to political campaigning when it stated:

> In past years, public officials of both political parties have given the public a complete financial accounting of themselves.
>
> Some who come quickly to mind are Richard Israel when running for Attorney General, John Hawkins for U.S. Senate, Joseph Garrahy for Governor, Vincent Cianci, Jr. for Mayor of Providence, and incumbent Mayor, Joseph Paolino, Jr.

(emphasis added). Plainly, the mailer's recitation of candidates "running for" election to various federal, state and local offices, is an election-related reference. The mailer further states that Representative St Germain must disclose his taxes and finances because "[t]o do otherwise would bring an end to our efforts to rid our government of corruption and those who seek personal gain." Analyzing this statement about ridding the government of corruption, the General Counsel correctly found that it "is a reference to an election in that one way to remove Congressman St Germain would be to vote him out of office." MUR 2116, General Counsel's Report at 7.

(2)

After discussing the similarities and differences present in Advisory Opinion 1985-14 and MUR 2116, the General Counsel applied the Commission's two part test. First, the General Counsel found that there was a "clearly identified" candidate. As noted above, "[t]he Rhode Island Citizens mailer identified by name a specific Democratic representative, Fernand St Germain,

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just as the DCCC proposed to name a specific Republican congressman in its AO request." Id.

Second, after considering the context in which the mailer was made and the actual text of the mailer, the General Counsel concluded that just as there was an electioneering message present in Advisory Opinion 1985-14, "[s]imilarly, the Rhode Island Citizens mailing conveys an electioneering message thus constituting a section 441a(d) expenditure by NRCC." Id. at 7. That the mailer conveyed an electioneering message was reinforced by statements from the NRCC field representative for 100 House races for the northeast region of the country. After observing that St Germain's congressional district was "one of 10 on which he [was] concentrating," the NRCC representative acknowledged that "my job is to do whatever I can to get Republicans elected to Congress and I choose vulnerable seats and I think Freddy St Germain is more vulnerable than many people realize." Providence Sunday Journal, Oct. 20, 1985, reprinted in MUR 2116, General Counsel's Report, Attachment 1 at 19. The NRCC representative further acknowledged, "Any time we have a chance to do something, we're going to do it." Less than two months after this interview, the NRCC-funded mailer was distributed throughout Representative St Germain's congressional district.

We believe that the General Counsel properly applied the same two part test in MUR 2116 which was applied in Advisory Opinion 1985-14. In our opinion, the General Counsel correctly recognized that in both mailers there was a "clearly identified"

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candidate and an "electioneering message." Accordingly, we agree with the General Counsel's recommendation to find reason to believe that there was a violation of 2 U.S.C. §441a(d).

C.

Our decision that the NRCC expenditure for the St Germain mailer is allocable under §441a(d) rejects the notion that the NRCC was engaging in some form of non-election activity. The primary purpose of political parties and the congressional candidate committees such as the National Republican Congressional Committee, is to support their party's candidates and oppose the candidates of the rival party. Moreover, a finding that the expenditure by the NRCC in MUR 2116 was not allocable under §441a(d) would create a serious loophole in the §441a(d) limitations on party expenditures on behalf of congressional candidates.

The goal of a political party is to win elections. The Act reflects this basic understanding when it defines "political party" solely in election-related terms:

> The term "political party" means an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization.

2 U.S.C. §431(16). The courts have similarly noted that "[t]he party's ultimate goal...is to obtain control of the levers of government by winning elections...." Nader v. Schaffer, 417

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F.Supp. 837, 844 (D. Conn. 1976), aff'd. mem., 429 U.S. 989 (1976). See also Rosario v. Rockefeller, 458 F.2d 649, 652 (2d Cir. 1972), aff'd., 410 U.S. 752 (1973) (a political party is composed of "individuals drawn together to advance certain aims by nominating and electing candidates who will pursue those aims once in office."). Finally, a standard dictionary defines a party as "an organized group which tries to elect its candidates to office." Webster's New World Dictionary, College Edition (1966).

Respondent NRCC was organized specifically to support Republican Party candidates for elections to the United States House of Representatives. The NRCC's primary activity is fundraising and the subsequent expenditure of those funds in connection with House races.

The NRCC is composed of party and political professionals. Their job is to win elections for House Republican candidates and, conversely, to defeat the Democratic candidates. Surely it would be naive to think that such political activities as the St Germain mailer "are motivated at these levels by some academic interest in 'democracy' or other public service impulse." See Elrod v. Burns, 427 U.S. 347, 385 (1976)(Powell, J., dissenting). As the NRCC readily acknowledges, its primary purpose is to "do whatever [it] can to get Republicans elected to Congress." Interview with NRCC Field Representative, Providence Sunday Journal, Oct. 20, 1985, reprinted in MUR 2116, General Counsel's Report, Attachment 1 at 19.

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The purpose and effect of the NRCC funded mailer in MUR 2116 are palpable. Indeed, how can anyone, familiar with the operation and purposes of political parties, conclude that a mailer funded by the NRCC, clearly identifying by name a Democratic incumbent Representative, targeted to the Representative's district, attacking the record of the Representative, and distributed less than a year before the general election, was not "in connection with" a federal election.

Moreover, to exempt such activity as the anti-St Germain mailer from the §441a(d) limitations would create a large loophole in §441a(d). Through that section, Congress sought to "allow the parties to play a strong role in the electoral process, while at the same time assuring that limitations are placed on their activities." H.R. Rep. No. 93-1239, 93d Cong., 2d. Sess. 157 (1974)(supplemental views of Rep. Frenzel). The Congress's recognition of the need to impose some limitation on party activity is clear from the legislative history. At one point, the Senate passed an amendment proposed by Sen. Brock that would have exempted committees such as the NRCC from the Act's expenditure limits. 120 Cong. Rec. S5189-S5191 (daily ed. Apr. 3, 1974). The Senate reversed itself, however, five days later. 120 Cong. Rec. S5411-S5415 (daily ed. Apr. 8, 1974). Successfully urging repeal of the Brock amendment, Senator Clark noted the "loophole" created by the Brock amendment and stated,

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"To permit unlimited expenditures would be a serious mistake." 120 Cong. Rec. S5413, S5414 (daily ed. Apr. 8, 1974) (remarks of Sen. Clark).

The importance of MUR 2116 is clear. The §441a(d) limitations will become virtually meaningless if precedent is ignored and targeted party expenditures such as the NRCC funded mailer are allowed to be masked under the guise of generic non-election related activity.

IV.

The rule of law depends in large part on adherence to precedent. Fidelity to prior rulings takes the capricious element out of law and provides stability and uniformity to the decision-making process. It is only through an adherence to precedent that an institution may "transcend the moment" when facing the difficult problems which often confront it. Green v. United States, 355 U.S. 184, 215 (1957).

In MUR 2116, the Commission abruptly ignored clear precedent. As a result, the Commission finds itself in an untenable position. There is simply no adequate justification for concluding that the activities of the Republican Party in MUR 2116 do not constitute expenditures subject to the limits of §441a(d), but that similar activities, when proposed by the Democratic Party in AO 1985-14, would constitute expenditures subject to §441a(d) limitations.

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Consistent with the Commission's prior rulings in Advisory Opinions 1985-14 and 1984-15, we agree with the Commission's General Counsel that there is "reason to believe that the NRCC and RNC violated 2 U.S.C. §441a(d)."

April 5, 1988
Date

Danny L. McDonald by F.H.O.
Danny L. McDonald
Vice-Chairman

April 5, 1988
Date

John Warren McGarry
John Warren McGarry
Commissioner

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Plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 13, 1988

Roger Allen Moore, Esquire
Chief Counsel
Republican National Committee
210 First Street, S.E.
Washington, D.C. 20003

Re: MUR 2116
Republican National
Committee and
William J. McManus,
as treasurer

Dear Mr. Moore:

By letter dated June 17, 1986, the Office of the General Counsel informed you of determinations made with respect to the complaint filed by the Democratic Congressional Campaign Committee against the Republican National Committee and William J. McManus, as treasurer. Enclosed with that letter was a copy of the General Counsel's Report.

Enclosed is a statement by Commissioners Elliott and Josefiak explaining their votes in this matter and a statement of Commissioners McDonald and McGarry explaining their votes. These documents will be placed on the public record as part of the file in MUR 2116.

If you have any questions please contact Lee Andersen at 376-5690.

Sincerely,

Lawrence M Noble

Lawrence M. Noble
General Counsel

Enclosures

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 13, 1988

Jan W. Baran, Esquire
General Counsel
Benjamin L. Ginsberg, Esquire
Legal Counsel
National Republican Congressional
Committee
320 First Street, S.E.
Washington, D.C. 20003

Re: MUR 2116
National Republican
Congressional Committee
and Jack McDonald, as
treasurer

Dear Messrs. Baran and Ginsberg:

By letter dated June 17, 1986, the Office of the General Counsel informed you of determinations made with respect to the complaint filed by the Democratic Congressional Campaign Committee against National Republican Committee and Jack McDonald, as treasurer. Enclosed with that letter was a copy of the General Counsel's Report.

Enclosed is a statement by Commissioners Elliott and Josefiak explaining their votes in this matter and a statement by Commissioners McDonald and McGarry explaining their votes. These documents will be placed on the public record as part of the file in MUR 2116.

If you have any questions please contact Lee Andersen at 376-5690.

Sincerely,

Lawrence M. Noble (JH)

Lawrence M. Noble
General Counsel

Enclosures

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Thm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 13, 1988

Robert G. Flanders, Esquire
Edwards & Angell
2700 Hospital Trust Tower
Providence, R.I. 82903

Re: MUR 2116
John A. Holmes, Jr.

Mr. Flanders:

By letter dated June 17, 1986, the Office of the General Counsel informed you of determinations made with respect to the complaint filed by the Democratic Congressional Campaign Committee against John A. Holmes, Jr. Enclosed with that letter was a copy of the General Counsel's Report.

Enclosed is a statement by Commissioners Elliott and Josefiak explaining their votes in this matter and a statement by Commissioners McDonald and McGarry explaining their votes. These documents will be placed on the public record as part of the file in MUR 2116.

If you have any questions please contact Lee Andersen at 376-5690.

Sincerely,

Lawrence M. Noble (JJ)

Lawrence M. Noble
General Counsel

Enclosures

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 13, 1988

Robert F. Bauer, Esquire
Perkins Coie
1110 Vermont Avenue, N.W.
Suite 1200
Washington, D.C. 20005

Re: MUR 2116

Dear Mr. Bauer:

By letter dated June 17, 1986, the Office of the General Counsel informed you of determinations made with respect to the complaint filed by your clients against the following persons: National Republican Congressional Committee and Jack McDonald, as treasurer; Republican National Committee and William J. McManus, as treasurer, and John A. Holmes, Jr. Enclosed with that letter was a copy of the General Counsel's Report.

Enclosed is a statement by Commissioners Elliot and Josefiak explaining their votes in this matter and a statement of Commissioners McDonald and McGarry explaining their votes. These documents will be placed on the public record as part of the file in MUR 2116.

If you have any questions, please contact Lee Andersen at 376-5690.

Sincerely,

Lawrence M. Noble (FH)

Lawrence M. Noble
General Counsel

Enclosures

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