



FEDERAL ELECTION COMMISSION

1125 K STREET N.W.  
WASHINGTON, D.C. 20543

THIS IS THE END OF MUR # 2249

Date Filmed 12/2/86 Camera No. --- 2

Cameraman AS

86040520926

12 day report and Comment sheetsRouting slips

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):

- |                                                                                    |                                                                           |
|------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| <input type="checkbox"/> (1) Classified Information                                | <input type="checkbox"/> (6) Personal privacy                             |
| <input type="checkbox"/> (2) Internal rules and practices                          | <input type="checkbox"/> (7) Investigatory files                          |
| <input type="checkbox"/> (3) Exempted by other statute                             | <input type="checkbox"/> (8) Banking Information                          |
| <input type="checkbox"/> (4) Trade secrets and commercial or financial information | <input type="checkbox"/> (9) Well Information (geographic or geophysical) |
| <input checked="" type="checkbox"/> (5) Internal Documents                         |                                                                           |

Signed Maura White Callaway  
date 12/1/86



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 18, 1986

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Honorable Sherwood Boehlert  
U.S. House of Representatives  
Washington, D.C. 20515

RE: MUR 2249

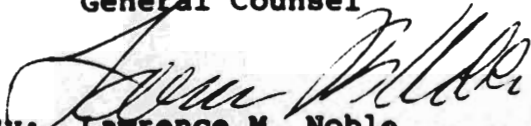
Dear Mr. Boehlert:

The Federal Election Commission has reviewed the allegations of your complaint dated September 23, 1986, and determined that on the basis of the information provided in your complaint, and information provided by the respondents, there is no reason to believe that a violation of 2 U.S.C. § 441d(a) has been committed by Rosemary Pooler, Friends of Rosemary Pooler, and Gary A. Grossman, as treasurer. Accordingly, on November 14, 1986, the Commission decided to close the file in this matter. The Federal Election Campaign Act of 1971, as amended, 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 Federal Election Campaign Act of 1971, as amended, you may file a 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 Counsel

By:   
Lawrence M. Noble  
Deputy General Counsel

Enclosure  
General Counsel's Report

85040620928



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 18, 1986

Nancy Pontius, Esquire  
MacKenzie, Smith, Lewis,  
Mitchell and Hughes  
600 Onondaga Savings Bank Building  
Syracuse, NY 13202-1399

RE: MUR 2249  
Friends of Rosemary Pooler;  
Gary Grossman, as treasurer;  
Rosemary Pooler

Dear Ms. Pontius:

On September 30, 1986, the Commission notified your clients, Rosemary Pooler, Friends of Rosemary Pooler, and Gary Grossman, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on November 14, 1986, determined that on the basis of the information in the complaint, and information provided on behalf of your clients, there is no reason to believe Rosemary Pooler, Friends of Rosemary Pooler, and Gary Grossman, as treasurer, violated 2 U.S.C. § 441d(a). 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

Enclosure  
General Counsel's Report

85040520929

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Rosemary Pooler; Friends of  
Rosemary Pooler; Gary A. Grossman,  
as treasurer

)  
)  
)  
)  
)  
)  
MUR 2249

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on November 14, 1986, the Commission decided by a vote of 6-0 to take the following actions in MUR 2249:

1. Find no reason to believe Rosemary Pooler, Friends of Rosemary Pooler, and Gary Grossman, as treasurer violated 2 U.S.C. § 441d(a).
2. Close the file in this matter.
3. Approve the letters, as recommended in the First General Counsel's Report signed November 10, 1986.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for this decision.

Attest:

11-17-86

Date

Marjorie W. Emmons

Marjorie W. Emmons  
Secretary of the Commission

Received in Office of Commission Secretary: Wed., 11-12-86, 9:33  
Circulated on 48 hour tally basis: Wed., 11-12-86, 4:00  
Deadline for vote: Fri., 11-14-86, 4:00

86040520930



# FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

## MEMORANDUM

TO: Office of the Commission Secretary  
FROM: Office of General Counsel *pld*  
DATE: November 12, 1986  
SUBJECT: MUR 2249 - First General Counsel's Report

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

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

### CIRCULATIONS

48 Hour Tally Vote ☒  
Sensitive ☒  
Non-Sensitive ☐

24 Hour No Objection ☐  
Sensitive ☐  
Non-Sensitive ☐

Information ☐  
Sensitive ☐  
Non-Sensitive ☐

Other ☐

### DISTRIBUTION

Compliance ☒

Audit Matters ☐

Litigation ☐

Closed MUR Letters ☐

Status Sheets ☐

Advisory Opinions ☐

Other (see distribution  
below) ☐

85040520931

**FEDERAL ELECTION COMMISSION**

**FIRST GENERAL COUNSEL'S REPORT**

DATE AND TIME OF TRANSMITTAL  
BY OGC TO THE COMMISSION \_\_\_\_\_

**RECEIVED SENSITIVE**  
OFFICE OF THE FEC  
COMMISSION SECRETARY  
86 NOV 12 A 9:33  
MUR: 2249  
DATE COMPLAINT  
FILED: 9/23/86  
DATE OF NOTIFICATION: 9/30/86  
STAFF: MAURA WHITE CALLAWAY

COMPLAINANT'S NAME: Sherwood Boehlert

RESPONDENTS' NAMES: Rosemary Pooler; Friends of  
Rosemary Pooler; Gary A. Grossman,  
as treasurer

RELEVANT STATUTE: 2 U.S.C. § 441d

INTERNAL REPORTS CHECKED: Public Records

FEDERAL AGENCIES CHECKED: None

**GENERATION OF MATTER**

On September 23, 1986, Sherwood Boehlert filed a complaint against Rosemary Pooler, Friends of Rosemary Pooler, and Gary A. Grossman, as treasurer (Attachment 1). Notification of the complaint was mailed to the respondents on September 30, 1986. On October 21, 1986, the respondents submitted their response to the complaint's allegations (Attachment 2).

**FACTUAL AND LEGAL ANALYSIS**

The complaint alleges that Rosemary Pooler and Friends of Rosemary Pooler violated 2 U.S.C. § 441d by failing to state in a television ad urging the election of Rosemary Pooler that the ad was not authorized by the complainant, Sherwood Boehlert. The complainant contends that the ad mentions "my record as a Congressman and position as a candidate" and is being used by Rosemary Pooler "to further her own campaign."

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The complainant notes that he is a candidate for reelection in a district neighboring the 27th congressional district in which Rosemary Pooler is a candidate, and that his district is reached through the Syracuse, New York television market. The complainant contends that on or about September 2, 1986, Rosemary Pooler "began airing television spots that include the following message about my candidacy":

**Announcer:** Congressman Stanley Lundine brought 600 new high-tech jobs to Elmira. Congressman Sherwood Boehlert helped eight hundred laid off workers get new jobs in his district. Throughout New York, Congressmen are bringing new jobs to their districts.

**Rosemary Pooler:** If they can do it, we can do it. Just in the last year, we've lost three thousand five hundred jobs. We can turn that around. If I go to Congress, I intend to see that we do.

**Announcer:** Rosemary Pooler for Congress. She'll do the job that needs to be done.

It is noted in the complaint that the ad states that it was "Paid for by Friends of Rosemary Pooler."

The complainant asserts that he "at no time authorized Pooler's use in her spots of this statement about my success as a Representative for the voters of New York's 25th congressional district. Nor have I asked her to benefit my candidacy as she has in the above-described spot." It is the position of the complainant that the "Pooler ad, despite the clear requirements of 2 U.S.C. 44ld, fails to state, as it must, that neither I nor my campaign authorized this ad." The complainant maintains that

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neither he nor his campaign knew about the ad before it was aired and that he has "sent a telegram to Mrs. Pooler calling on her to remove the ads and she has refused to do so."

In response to the complaint's allegations the respondents assert that 2 U.S.C. § 441d(a) "has no applicability to the reference contained in the advertisement with respect to Congressman Boehlert's record in assisting laid off workers in his district to get new jobs for the very simple reason that, as emphatically stated by the Second Circuit in F.E.C. v. Central Long Island Tax Reform Immediately Committee, 616 F.2d 45, 53 (2d Cir. 1980), 'the words expressly advocating means (sic) exactly what they say.'" After citing to the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1 (1976), the respondents argue that "[b]y no stretch of the imagination could the advertisement in question be construed as expressly advocating the election or defeat of Sherwood Boehlert." According to the response, "[a]s was the case in F.E.C. v. Central Long Island Tax Reform, Etc., '[t]here is no reference anywhere in the [advertisement] to the congressman's party, to whether he is running for re-election, to the existence of an election or the act of voting in any election [other than the one in which Rosemary Pooler and not Congressman Boehlert is a candidate]; nor is there anything approaching an unambiguous statement in favor of or against the election of Congressman [Boehlert].' Supra, 616 F.2d at 53." The respondents emphasize that "[n]o where in the advertisement are words such as 'vote for,' 'elect,' 'support,' or 'cast your ballot for' used with respect to Congressman Boehlert."

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In their defense the respondents further maintain that "Congressman Boehlert's record as a Congressman is a matter of public record and public discussion of or reference to that record by Rosemary Pooler, even if it could be construed to exert an indirect favorable influence on his primary election, falls within the broad protection to be accorded political expression under the First Amendment to the United States Constitution. See Buckley v. Valeo, supra, 424 U.S. at 42, n. 50, 96 S.Ct. at 646, n. 50. See also Friends of Phil Gramm v. Americans for Phil Gramm, 587 F. Supp. 769, 774 (E.D. Virg. 1984)." The response asserts that "[w]hile the Congressman may not have asked Rosemary Pooler to benefit his candidacy, his approval was in no way a necessary prerequisite for the exercise of her First Amendment rights in making reference to his record, nor is his disapproval a significant basis for the denial of those rights." The response concludes by noting that the advertisement at issue "was in full compliance with 2 U.S.C. § 441d in that it expressly advocated the election of Rosemary Pooler to Congress and contained a statement that it was 'Paid for by Friends of Rosemary Pooler,'" and contained no language "which could be interpreted as an endorsement by Congressman Boehlert of Rosemary Pooler's candidacy."

Pursuant to 2 U.S.C. § 441d(a), whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting

station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication -

(1) if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee, or

(2) if paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee;

(3) if not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

8 5 0 4 0 5 2 0 9 3 6  
The record in this matter demonstrates that the advertisement at issue, expressly advocating the election of Rosemary Pooler, contained the requisite notice that it was paid for by Friends of Rosemary Pooler, in conformance with 2 U.S.C. § 441d. The question at issue, therefore, is whether the advertisement was also required to state that it was not authorized by Sherwood Boehlert. See 2 U.S.C. § 441d(a)(3).

Only those communications expressly advocating the election or defeat of a clearly identified candidate or which solicit contributions through certain mediums must state the disclaimer notices required by 2 U.S.C. § 441d(a). In the instant matter, the advertisement in question neither expressly advocated

the election of Sherwood Boehlert nor solicited contributions on his behalf. At most, the advertisement simply mentioned his record as a Congressman. \*/ Thus, the respondents were not required to state on the advertisement that it was not authorized by Sherwood Boehlert. It is, therefore, the recommendation of this Office that the Commission find no reason to believe Rosemary Pooler, Friends of Rosemary Pooler, and Gary Grossman, as treasurer, violated 2 U.S.C. § 441d(a), and close the file in this matter.

Recommendations

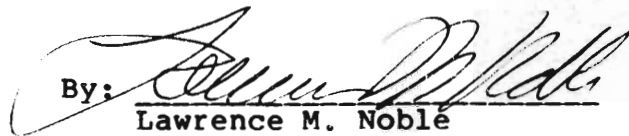
1. Find no reason to believe Rosemary Pooler, Friends of Rosemary Pooler, and Gary Grossman, as treasurer, violated 2 U.S.C. § 441d(a).
2. Close the file in this matter.
3. Approve the attached letters.

Charles N. Steele  
General Counsel

Date

11/10/86

By:



Lawrence M. Noble  
Deputy General Counsel

Attachments

1. Complaint
2. Response
3. Proposed letters (2)

\*/ In view of the fact that Sherwood Boehlert did not authorize or know about the ad before it was aired, the ad does not appear to constitute an in-kind contribution to Sherwood Boehlert by Friends of Rosemary Pooler even if the portion referring to Sherwood Boehlert is considered to be for the purpose of influencing a federal election.

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GCL#1588  
36 SEP 23 18:49  
MNL 2249

RECEIVED  
OFFICE OF THE FEC  
COMMISSIONER SECRETARY

36 SEP 24 12:34

September 17, 1986

SEP 23 19:47

Charles N. Steele, Esquire  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20004

Dear Mr. Steele:

This Complaint against Rosemary Pooler, a candidate for Congress, and the Pooler for Congress Committee, 505 East Fayette Street, Syracuse, New York 13202, is filed with the Federal Election Commission ("FEC") pursuant to 2 U.S.C. 4437g.

This Complaint is about candidate Rosemary Pooler's failure to adhere to either truth in advertising or the requirements of federal election law.

I feel compelled to file this Complaint since Pooler is, without any authorization and completely against my wishes, using my record as a Congressman and position as a candidate in her television spots to further her own campaign. I file this Complaint to insure that Pooler's violations of the Federal Election Campaign Act ("FECA") do not reflect on my own campaign. I had previously sent a telegram to Mrs. Pooler calling on her to remove the ads and she has refused to do so.

Attachment 1(1)

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Pooler's failure to use the required disclaimer on her television ads is an attempt to conceal from the public crucial information about her ads. The disclaimer rules of the FECA are designed to provide the public with complete information on the sponsorship and authority for an ad.

The FEC must investigate Pooler's television ads using my name and stop Pooler from violating the FECA.

#### FACTS

I am the Congressman from New York's 25th congressional district and a candidate for reelection on the November 4, 1986. My district is reached through the Syracuse, N.Y. television market.

The neighboring 27th congressional district is represented by Congressman George Wortley. He is being challenged by Rosemary Pooler. Voters of that district are also in the Syracuse media market.

On or about September 2, 1986, Pooler began airing television spots that include the following message about my candidacy:

Announcer: Congressman Stanley Lundine brought 600 new high-tech jobs to Elmira. Congressman Sherwood Boehlert helped eight hundred layed off workers get new jobs in his district. Throughout New York, Congressmen are bringing new jobs to their districts.

Rosemary Pooler: If they can do it, we can do it. Just in the last year, we've lost three thousand five hundred jobs. We can turn that around. If I go to Congress, I intend to see that we do.

Announcer: Rosemary Pooler for Congress. She'll do the job that needs to be done.

The disclaimer on the ad states: Paid for by Friends of Rosemary Pooler.

I have at no time authorized Pooler's use in her spots of this statement about my success as a Representative for the voters of New York's 25th congressional district. Nor have I asked her to benefit my candidacy as she has in the above-described spot.

#### VIOLATIONS OF LAW

The disclaimer provisions of 2 U.S.C. 441d are designed to insure that all ads benefitting the election of a candidate state the relationship of that campaign to the group that paid for the ad.<sup>1/</sup> The law states that any ad on a broadcasting station benefitting a candidate must clearly and conspicuously display one of the following authorization notices:

if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee, or

if paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee;

if not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

2 U.S.C. 441d.

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<sup>1/</sup> Under 11 C.F.R. 100.8(b)(17), the nature of the Pooler ad is clear: "The payment by a candidate for any public office or by such candidate's authorized committee, of the costs of that candidate's campaign materials which include information on or any reference to a candidate for Federal office and which are used in connection with volunteer activities ... is not an expenditure on behalf of such candidate for federal office, provided that the payment is not for the use of broadcasting ... or similar types of general public communication or political advertising.

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The Pooler ad, despite the clear requirements of 2 U.S.C. 441d, fails to state, as it must, that neither I nor my campaign authorized this ad. I did not know about this ad. My campaign did not know about this ad. This ad should be removed from the air.

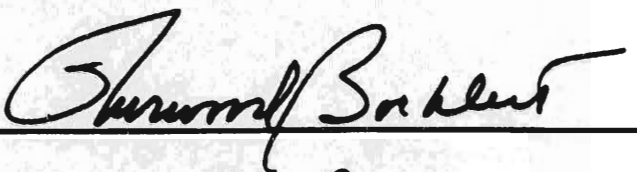
Pooler's violation of the federal statute is injuring the public, which has a right to truth in advertising about the political commercials on the air. In order to make clear that my campaign has nothing to do with this ad, and indeed disavows it, the ad must contain the required disclaimer.

#### CONCLUSION

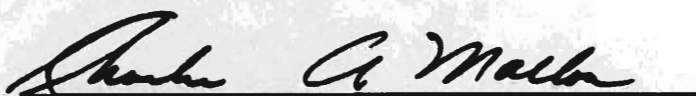
The undersigned hereby requests that the FEC investigate these potential violations and enforce, as necessary, the FECA and the FEC's regulations.

#### VERIFICATION

The undersigned swears that the allegations and facts set forth in this Complaint are true to the best of his knowledge, information and belief.



Subscribed and sworn to before me this 17 day of September, 1986.

  
Notary Public

My Commission Expires: Charles A. Mallon  
Notary Public, Dist. of Columbia  
Commission Expires, Sept. 30, 1988

1(4)

# MACKENZIE SMITH LEWIS MICHELL & HUGHES

LAW OFFICES

600 ONONDAGA SAVINGS BANK BUILDING  
SYRACUSE, NEW YORK 13202-1300

(315) 474-7871  
TELECOPIER (315) 474-7871

CCC#1810  
000121 01:48

RAYMOND W. HACKETT  
JAY W. WASON  
JOHN E. MORRISSEY, JR.  
CHARLES ANDREWS  
THOMAS F. QUINLAN  
CHARLES J. CROMIN  
JAMES H. O'CONNOR  
WILLIS B. LEMON  
CARTER H. STRICKLAND\*\*  
DENNIS R. SALDWIN  
GAY M. POWERDY\*\*  
KEVIN M. REILLY  
EDWARD J. MOSES  
GEORGE R. WOLFF  
CLAYTON M. MALE, JR.  
ALFRED W. POPRESS  
KENNETH E. ACKERMAN  
ARTHUR A. CHALENBERG, JR.  
CATHERINE A. GALE  
DAVID M. GARDER  
ARTHUR W. WENTLANDT  
MICHAEL P. DALY  
NANCY L. PONTIUS

EDWARD J. SPENCER, III  
CHARLES E. MCGRAW  
DENNIS P. MERRIGAN  
DOUGLAS E. JOHNSON  
STEPHEN T. HELMER  
JAMES T. STOKER  
JOHN F. SUTPHEN\*\*

\*\*ALSO ADMITTED  
TO FLORIDA BAR

\*\*ALSO ADMITTED  
TO DC BAR

\*\*\*ALSO ADMITTED  
TO GEORGIA BAR

EDMUND H. LEWIS  
1984-1972  
JOHN H. HUGHES  
1984-1972  
EDWARD J. SPENCER, JR.  
1917-1981  
WILLIS A. BROWN  
1910-1982  
ROBERT S. MCCORMICK  
1981-1983

FRANCIS P. MALONEY  
WILLIAM L. BROAD  
CARLETON E. REIFFENSTEIN  
GEORGE S. SULLIVAN  
ROBERT J. GARG, JR.  
COUNSEL

October 15, 1986

Lawrence M. Noble  
Deputy General Counsel  
Federal Election Commission  
Washington, D.C. 20463

RE: MUR 2249

Dear Mr. Noble:

Enclosed is a signed Statement of Designation of Counsel,  
designating the undersigned as counsel for Rosemary S. Pooler and  
Friends of Rosemary Pooler in connection with the above-referenced  
complaint.

## FACTS

Sherwood Boehlert, Congressman from New York's 25th  
Congressional District has alleged that Rosemary S. Pooler and  
Friends of Rosemary Pooler, erroneously referred to in the  
complaint as Pooler for Congress Committee, have violated 2 U.S.C.  
§441d by using his "record as a Congressman and position as a  
candidate in her television spots to further her own campaign" and  
by benefitting his candidacy without his permission. The complete

Attachment 2(1)

85040520942

Lawrence M. Noble  
Federal Election Commission  
October 15, 1986  
Page Two

text of the television advertisement which is the subject of the complaint, and which has not been aired since September 21, 1986 and is not scheduled to be aired again, is as follows:

Announcer: Congressman Stan Lundine brought 600 new high-tech jobs to Elmira. Congressman Sherwood Boehlert helped eight hundred laid off workers get new jobs in his district. Throughout New York, Congressmen are bringing jobs to their districts.

Rosemary Pooler: If they can do it, we can do it. Just in the last year, we've lost thirty five hundred jobs. We can turn that around. If I go to Congress, I intend to see that we do.

Announcer: Rosemary Pooler for Congress. She'll do the job that needs to be done.

A videotape of the advertisement is submitted herewith.

As pointed out in the Boehlert complaint, the advertisement clearly stated that it had been "Paid for by Friends of Rosemary Pooler."

#### LEGAL ARGUMENT

2 U.S.C. §441d(a), which Congressman Boehlert erroneously interprets as applying to any ad "benefitting a candidate", provides that:

(a) Whenever any person makes an expenditure for the purpose of financing communications expressly advocating the

Lawrence M. Noble  
Federal Election Commission  
October 15, 1986  
Page Three

election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication--

(1) if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee, or

(2) if paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee;

(3) if not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

(Emphasis added)

Section 441d(a) has no applicability to the reference contained in the advertisement with respect to Congressman Boehlert's record in assisting laid off workers in his district to get new jobs for the very simple reason that, as emphatically stated by the Second Circuit in F.E.C. v. Central Long Island Tax Reform Immediately Committee, 616 F.2D 45, 53 (2d Cir. 1980), "the words expressly advocating means (sic) exactly what they say."

Lawrence M. Noble  
Federal Election Commission  
October 15, 1986  
Page Four

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The Second Circuit decision, which appears to contain the most thorough judicial analysis of the provision and its legislative history by a circuit court to date, explains that the language "expressly advocating the election or defeat of a clearly identified candidate" was incorporated by Congress in the 1976 FECA amendments, Pub. L. 94-283, Title I, 90 Stat. 481, to conform the provision to the holding of the Supreme Court in Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L. Ed. 2d 659 (1976). Id. 616 F.2d at 52.

Buckley v. Valeo involved a challenge to the constitutionality of 18 U.S.C. §608(e)(1) and 2 U.S.C. §434(e) on various grounds, including vagueness. Section 608(e)(1) at that time provided in pertinent part that "[n]o person may make any expenditure ... relative to a clearly defined candidate during a calendar year which, when added to all other expenditures made by such person during the year advocating the election or defeat of such candidate, exceeds \$1,000.00." Section 434(e) set forth certain disclosure requirements applying to "[e]very person ... who makes contributions or expenditures" for the purpose of influencing the election of candidates to federal office.

2(4)

Lawrence M. Noble  
Federal Election Commission  
October 15, 1986  
Page Five

The Supreme Court, as quoted in F.E.C. v. Central Long Island Tax Reform, Etc., supra., 616 F.2d at 53-54, held:

"We agree that in order to preserve the provision against invalidation on vagueness grounds, §608(e)(1) must be construed to apply only to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office.<sup>52</sup>

<sup>52</sup>This construction would restrict the application of §608(e)(1) to 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.'" 424 U.S. at 44, 96 S.Ct. at 646-647.

"To ensure that the reach of §434(e) is not impermissibly broad, we construe 'expenditure' for purposes of that section in the same way that we construed the terms of §608(e) - to reach only funds used for communications that expressly advocate<sup>108</sup> the election or defeat of a

<sup>108</sup>See n. 52, supra." 424 U.S. at 80, 96 S.Ct. at 664.  
clearly identified candidate. This reading is directed precisely to that spending that is unambiguously related to the campaign of a particular federal candidate.

Although Section 441d was not involved in Buckley v. Valeo, the requirement of express advocacy now contained in the statute was incorporated in response to Buckley at the same time §434(e) was amended to add the requirement. See F.E.C. v. Central Long Island Tax Reform, Etc., supra., 616 F.2d at 52, n. 8.

Lawrence M. Noble  
Federal Election Commission  
October 15, 1986  
Page Six

In declining to accept the apparent position of the F.E.C. that "expressly advocating the election or defeat" should be liberally construed to mean "express or implied" and adopting a strict construction of §441d(a), the Second Circuit pointed out that:

The Supreme Court [in Buckley v. Valeo] made note of the broad protection to be given political expression, including discussion of candidates, and added, quoting the lower court opinion:

"Public discussion of public issues which are also campaign issues readily and often unavoidably draws in candidates and their positions, their voting records and other official conduct. Discussions of those issues, and as well more positive efforts to influence public opinion on them, tend naturally and inexorably to exert some influence on voting at elections." 424 U.S. at 42 n. 50, 96 S.Ct. at 646, n. 50.

Supra., 616 F.2d at 53.

By no stretch of the imagination could the advertisement in question be construed as expressly advocating the election or defeat of Sherwood Boehlert. As was the case in F.E.C. v. Central Long Island Tax Reform, Etc., "[t]here is no reference anywhere in the [advertisement] to the congressman's party, to whether he is running for re-election, to the existence of an election or the act of voting in any election [other than the one in which Rosemary

Lawrence M. Noble  
Federal Election Commission  
October 15, 1986  
Page Seven

Pooler and not Congressman Boehlert is a candidate]; nor is there anything approaching an unambiguous statement in favor of or against the election of Congressman [Boehlert]." Supra., 616 F.2d at 53. Nowhere in the advertisement are words such as "vote for," "elect," "support," or "cast your ballot for" used with respect to Congressman Boehlert.

8 5 0 4 0 5 2 0 9 4 8  
Congressman Boehlert's record as a Congressman is a matter of public record and public discussion of or reference to that record by Rosemary Pooler, even if it could be construed to exert an indirect favorable influence on his election campaign, falls within the broad protection to be accorded political expression under the First Amendment to the United States Constitution. See Buckley v. Valeo, supra., 424 U.S. at 42, n. 50, 96 S.Ct. at 646, n. 50. See also Friends of Phil Gramm v. Americans for Phil Gramm, 587 F.Supp.769, 774 (E.D. Virg. 1984). While the Congressman may not have asked Rosemary Pooler to benefit his candidacy, his approval was in no way a necessary prerequisite for the exercise of her First Amendment rights in making reference to his record, nor is his disapproval a sufficient basis for the denial of those rights.

#### CONCLUSION

The advertisement which is the subject of the above-referenced complaint was in full compliance with 2 U.S.C. §441d in that it expressly advocated the election of Rosemary Pooler to Congress and

86040520949  
MACKENZIE SMITH LEWIS MICHELL & HUGHES

Lawrence M. Noble  
Federal Election Commission  
October 15, 1986  
Page Eight

contained a statement that it was "Paid for by Friends of Rosemary Pooler." Furthermore, the advertisement contained no language which could be interpreted as an endorsement by Congressman Boehlert of Rosemary Pooler's candidacy.

The fact that the advertisement made reference to Congressman Boehlert's record as a Congressman and may have provided an indirect, unintended benefit to Congressman Boehlert, does not convert protected speech into a violation of §441d, and a determination of no violation should be made and the file on this matter closed.

Very truly yours,

MACKENZIE SMITH LEWIS MICHELL & HUGHES

  
Nancy L. Pontius

NLP/dm  
Enclosures

2(8)



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Honorable Sherwood Boehlert  
U.S. House of Representatives  
Washington, D.C. 20515

RE: MUR 2249

Dear Mr. Boehlert:

The Federal Election Commission has reviewed the allegations of your complaint dated September 23, 1986, and determined that on the basis of the information provided in your complaint, and information provided by the respondents, there is no reason to believe that a violation of 2 U.S.C. § 441d(a) has been committed by Rosemary Pooler, Friends of Rosemary Pooler, and Gary A. Grossman, as treasurer. Accordingly, on , 1986, the Commission decided to close the file in this matter. The Federal Election Campaign Act of 1971, as amended, 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 Federal Election Campaign Act of 1971, as amended, you may file a 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 Counsel

By: Lawrence M. Noble  
Deputy General Counsel

Enclosure  
General Counsel's Report

Attachment 3(1)



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Nancy Pontius, Esquire  
MacKenzie, Smith, Lewis,  
Mitchell and Hughes  
600 Onondaga Savings Bank Building  
Syracuse, NY 13202-1399

RE: MUR 2249  
Friends of Rosemary Pooler;  
Gary Grossman, as treasurer;  
Rosemary Pooler

Dear Ms. Pontius:

On September 30, 1986, the Commission notified your clients, Rosemary Pooler, Friends of Rosemary Pooler, and Gary Grossman, as treasurer, 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 on behalf of your clients, there is no reason to believe Rosemary Pooler, Friends of Rosemary Pooler, and Gary Grossman, as treasurer, violated 2 U.S.C. § 441d(a). 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

Enclosure  
General Counsel's Report

3(2)

35040620951

MACKENZIE SMITH LEWIS MICHELL & HUGHES

LAW OFFICES

600 ONONDAGA SAVINGS BANK BUILDING  
SYRACUSE, NEW YORK 13202-1309

(315) 474-7571  
TELECOPIER (315) 474-7571

RAYMOND W. HACHBARTH  
JAY W. WASON  
JOHN E. MORRISSEY, JR.  
CHARLES ANDREWS  
THOMAS F. QUIMLAN  
CHARLES J. CROMIN  
JAMES H. O'CONNOR  
WILLIS E. LEMON  
CARTER H. STRICKLAND\*\*  
DENNIS R. BALOWIN  
GAY M. POMEROY\*  
KEVIN M. REILLY  
EDWARD J. MOSES  
GEORGE R. WOLFF  
CLAYTON H. HALE, JR.  
ALFRED W. POPKESS  
KENNETH E. ACKERMAN  
ARTHUR A. CHALENSKI, JR.  
CATHERINE A. GALE  
DAVID M. GABER  
ARTHUR W. WENTLANDT  
MICHAEL P. DALY  
NANCY L. PONTIUS

EDWARD J. SPENCER, III  
CHARLENE E. MCGRAW  
DENNIS P. HENNIGAN  
DOUGLAS C. JONHSTON  
STEPHEN T. HELMER  
JAMES T. STONES  
JOHN P. BUTPHEN\*\*\*

\*ALSO ADMITTED  
TO FLORIDA BAR

\*\*ALSO ADMITTED  
TO D.C. BAR

\*\*\*ALSO ADMITTED  
TO GEORGIA BAR

RECEIVED AT THE FEC

CCC#1810

86 OCT 21 AIL: 48

EDMUND H. LEWIS  
1884-1878  
JOHN H. HUGHES  
1804-1878  
EDWARD J. SPENCER, JR.  
1817-1881  
WILLIS A. BROWN  
1810-1888  
ROBERT S. MCCORMICK  
1821-1883

FRANCIS P. MALONEY  
WILLIAM L. BROAD  
CARLETON E. REIFFENSTEIN  
GEORGE S. SULLIVAN  
ROBERT J. SAND, JR.  
COUNSEL

October 15, 1986

Lawrence M. Noble  
Deputy General Counsel  
Federal Election Commission  
Washington, D.C. 20463

RE: MUR 2249

Dear Mr. Noble:

Enclosed is a signed Statement of Designation of Counsel,  
designating the undersigned as counsel for Rosemary S. Pooler and  
Friends of Rosemary Pooler in connection with the above-referenced  
complaint.

FACTS

Sherwood Boehlert, Congressman from New York's 25th  
Congressional District has alleged that Rosemary S. Pooler and  
Friends of Rosemary Pooler, erroneously referred to in the  
complaint as Pooler for Congress Committee, have violated 2 U.S.C.  
§441d by using his "record as a Congressman and position as a  
candidate in her television spots to further her own campaign" and  
by benefitting his candidacy without his permission. The complete

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86 OCT 22 AIL: 22

Lawrence M. Noble  
Federal Election Commission  
October 15, 1986  
Page Two

text of the television advertisement which is the subject of the complaint, and which has not been aired since September 21, 1986 and is not scheduled to be aired again, is as follows:

Announcer: Congressman Stan Lundine brought 600 new high-tech jobs to Elmira. Congressman Sherwood Boehlert helped eight hundred laid off workers get new jobs in his district. Throughout New York, Congressmen are bringing jobs to their districts.

Rosemary Pooler: If they can do it, we can do it. Just in the last year, we've lost thirty five hundred jobs. We can turn that around. If I go to Congress, I intend to see that we do.

Announcer: Rosemary Pooler for Congress. She'll do the job that needs to be done.

A videotape of the advertisement is submitted herewith.

As pointed out in the Boehlert complaint, the advertisement clearly stated that it had been "Paid for by Friends of Rosemary Pooler."

#### LEGAL ARGUMENT

2 U.S.C. §441d(a), which Congressman Boehlert erroneously interprets as applying to any ad "benefitting a candidate", provides that:

(a) Whenever any person makes an expenditure for the purpose of financing communications expressly advocating the

Lawrence M. Noble  
Federal Election Commission  
October 15, 1986  
Page Three

election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication--

(1) if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee, or

(2) if paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee;

(3) if not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

(Emphasis added)

Section 441d(a) has no applicability to the reference contained in the advertisement with respect to Congressman Boehlert's record in assisting laid off workers in his district to get new jobs for the very simple reason that, as emphatically stated by the Second Circuit in F.E.C. v. Central Long Island Tax Reform Immediately Committee, 616 F.2D 45, 53 (2d Cir. 1980), "the words expressly advocating means (sic) exactly what they say."

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Lawrence M. Noble  
Federal Election Commission  
October 15, 1986  
Page Four

86040620955  
The Second Circuit decision, which appears to contain the most thorough judicial analysis of the provision and its legislative history by a circuit court to date, explains that the language "expressly advocating the election or defeat of a clearly identified candidate" was incorporated by Congress in the 1976 FECA amendments, Pub. L. 94-283, Title I, 90 Stat. 481, to conform the provision to the holding of the Supreme Court in Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L. Ed. 2d 659 (1976). Id. 616 F.2d at 52.

Buckley v. Valeo involved a challenge to the constitutionality of 18 U.S.C. §608(e)(1) and 2 U.S.C. §434(e) on various grounds, including vagueness. Section 608(e)(1) at that time provided in pertinent part that "[n]o person may make any expenditure ... relative to a clearly defined candidate during a calendar year which, when added to all other expenditures made by such person during the year advocating the election or defeat of such candidate, exceeds \$1,000.00." Section 434(e) set forth certain disclosure requirements applying to "[e]very person ... who makes contributions or expenditures" for the purpose of influencing the election of candidates to federal office.

Lawrence M. Noble  
Federal Election Commission  
October 15, 1986  
Page Five

The Supreme Court, as quoted in F.E.C. v. Central Long Island Tax Reform, Etc., supra., 616 F.2d at 53-54, held:

"We agree that in order to preserve the provision against invalidation on vagueness grounds, §608(e)(1) must be construed to apply only to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office.<sup>52</sup>

<sup>52</sup>This construction would restrict the application of §608(e)(1) to 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.'" 424 U.S. at 44, 96 S.Ct. at 646-647.

"To ensure that the reach of §434(e) is not impermissibly broad, we construe 'expenditure' for purposes of that section in the same way that we construed the terms of §608(e) - to reach only funds used for communications that expressly advocate<sup>108</sup> the election or defeat of a

<sup>108</sup>See n. 52, supra." 424 U.S. at 80, 96 S.Ct. at 664.  
clearly identified candidate. This reading is directed precisely to that spending that is unambiguously related to the campaign of a particular federal candidate.

Although Section 441d was not involved in Buckley v. Valeo, the requirement of express advocacy now contained in the statute was incorporated in response to Buckley at the same time §434(e) was amended to add the requirement. See F.E.C. v. Central Long Island Tax Reform, Etc., supra., 616 F.2d at 52, n. 8.

Lawrence M. Noble  
Federal Election Commission  
October 15, 1986  
Page Six

In declining to accept the apparent position of the F.E.C. that "expressly advocating the election or defeat" should be liberally construed to mean "express or implied" and adopting a strict construction of §441d(a), the Second Circuit pointed out that:

The Supreme Court [in Buckley v. Valeo] made note of the broad protection to be given political expression, including discussion of candidates, and added, quoting the lower court opinion:

"Public discussion of public issues which are also campaign issues readily and often unavoidably draws in candidates and their positions, their voting records and other official conduct. Discussions of those issues, and as well more positive efforts to influence public opinion on them, tend naturally and inexorably to exert some influence on voting at elections." 424 U.S. at 42 n. 50, 96 S.Ct. at 646, n. 50.

Supra., 616 F.2d at 53.

By no stretch of the imagination could the advertisement in question be construed as expressly advocating the election or defeat of Sherwood Boehlert. As was the case in F.E.C. v. Central Long Island Tax Reform, Etc., "[t]here is no reference anywhere in the [advertisement] to the congressman's party, to whether he is running for re-election, to the existence of an election or the act of voting in any election [other than the one in which Rosemary

86040520957

Lawrence M. Noble  
Federal Election Commission  
October 15, 1986  
Page Seven

Pooler and not Congressman Boehlert is a candidate]; nor is there anything approaching an unambiguous statement in favor of or against the election of Congressman [Boehlert]." Supra., 616 F.2d at 53. No where in the advertisement are words such as "vote for," "elect," "support," or "cast your ballot for" used with respect to Congressman Boehlert.

8 6 0 4 0 6 2 0 9 5 8  
Congressman Boehlert's record as a Congressman is a matter of public record and public discussion of or reference to that record by Rosemary Pooler, even if it could be construed to exert an indirect favorable influence on his election campaign, falls within the broad protection to be accorded political expression under the First Amendment to the United States Constitution. See Buckley v. Valeo, supra., 424 U.S. at 42, n. 50, 96 S.Ct. at 646, n. 50. See also Friends of Phil Gramm v. Americans for Phil Gramm, 587 F.Supp.769, 774 (E.D. Virg. 1984). While the Congressman may not have asked Rosemary Pooler to benefit his candidacy, his approval was in no way a necessary prerequisite for the exercise of her First Amendment rights in making reference to his record, nor is his disapproval a sufficient basis for the denial of those rights.

#### CONCLUSION

The advertisement which is the subject of the above-referenced complaint was in full compliance with 2 U.S.C. §441d in that it expressly advocated the election of Rosemary Pooler to Congress and

9 6 0 4 0 6 2 0 9 5 9  
MACKENZIE SMITH LEWIS MICHELL & HUGHES

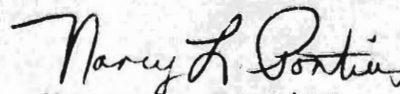
Lawrence M. Noble  
Federal Election Commission  
October 15, 1986  
Page Eight

contained a statement that it was "Paid for by Friends of Rosemary Pooler." Furthermore, the advertisement contained no language which could be interpreted as an endorsement by Congressman Boehlert of Rosemary Pooler's candidacy.

The fact that the advertisement made reference to Congressman Boehlert's record as a Congressman and may have provided an indirect, unintended benefit to Congressman Boehlert, does not convert protected speech into a violation of §441d, and a determination of no violation should be made and the file on this matter closed.

Very truly yours,

MACKENZIE SMITH LEWIS MICHELL & HUGHES

  
Nancy L. Pontius

NLP/dm  
Enclosures

# STATEMENT OF DESIGNATION OF COUNSEL

FILE # 2249

**NAME OF COUNSEL:** Nancy L. Pontius, Esq.

**ADDRESS:** Mackenzie Smith Lewis Mitchell & Hughes  
600 Onondaga Savings Bank Building  
Syracuse, New York 13202

**TELEPHONE:** (315) 474-7571

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.

October 13, 1986

**Date**

Rosemary S. Pooler

**Signature** - Rosemary S. Pooler

**RESPONDENT'S NAME:**

Friends of Rosemary Pooler and  
Rosemary S. Pooler

**ADDRESS:**

505 East Fayette Street

Syracuse, New York 13202

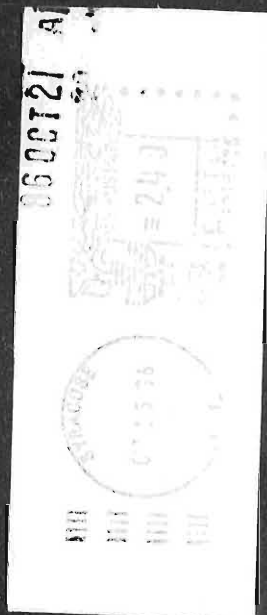
**HOME PHONE:**

(315) 446-3864

**BUSINESS PHONE:**

(315) 475-1986

85040520960



FROM: NANCY L. PONTIUS, ESQ.  
MACKENZIE SMITH LEWIS MICHELL & HUGHES  
ONONDAGA SAVINGS BANK BUILDING  
SYRACUSE, NEW YORK 13202-1399

TO: Lawrence M. Noble  
Deputy General Counsel  
Federal Election Commission  
Washington, D.C. 20463



**FEDERAL ELECTION COMMISSION**  
WASHINGTON, D.C. 20463

*Callaway*  
**September 30, 1986**

Gary A. Grossman, Treasurer  
Friends Of Rosemary Pooler  
PO Box 1062  
Syracuse, NY 13201

**Re: MUR 2249**

**Dear Mr. Grossman:**

The Federal Election Commission received a complaint which alleges that you, as treasurer, and Friends Of Rosemary Pooler may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2249. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you and Friends Of Rosemary Pooler 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.

95040620962

If you have any questions, please contact Maura Callaway, the staff person assigned to this matter, at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele  
General Counsel

*Lawrence M. Noble (R.H.N.)*

By: Lawrence M. Noble  
Deputy General Counsel

Enclosures  
Complaint  
Procedures  
Designation of Counsel Statement

86040620963



**FEDERAL ELECTION COMMISSION**

WASHINGTON, D.C. 20463

*CW W. W. W.*  
**September 30, 1986**

**Ms. Rosemary S. Pooler  
1605 Euclid Avenue  
Syracuse, NY 13224**

**Re: MUR 2249**

**Dear Ms. Pooler:**

**The Federal Election Commission received a complaint which alleges that you may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2249. Please refer to this number in all future correspondence.**

**Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in 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.**

86040520954

If you have any questions, please contact Maura Callaway, the staff person assigned to this matter, at (202) 376-5698. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele  
General Counsel

*Lawrence M. Noble* (RNF)

By: Lawrence M. Noble  
Deputy General Counsel

Enclosures  
Complaint  
Procedures  
Designation of Counsel Statement

86040520965



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

September 30, 1986

*Ordinary*

The Honorable Sherwood Boehlert  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Boehlert:

This letter will acknowledge receipt of a complaint filed by you which we received on September 23, 1986, alleging possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Friends Of Rosemary Pooler and Gary A. Grossman as treasurer, and Ms. Rosemary Pooler. The respondents 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 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 the original complaint. For your information, we have attached a brief description of the Commission's procedures for handling complaints. We have numbered this matter under review MUR 2249. Please refer to this number in all future correspondence. If you have any questions, please contact Retha Dixon at (202) 376-3110.

Sincerely,

Charles N. Steele  
General Counsel

*Lawrence M. Noble (RNF)*

By: Lawrence M. Noble  
Deputy General Counsel

Enclosure

85040520956



FEDERAL ELECTION COMMISSION  
WASHINGTON, DC 20463

*Off Record*  
**SENSITIVE**

MEMORANDUM TO:

THE COMMISSION

FROM:

MARJORIE W. EMMONS/CHERYL A. FLEMING *CAF*

DATE:

SEPTEMBER 24, 1986

SUBJECT:

MUR 2249 - COMPLAINT

The attached has been circulated for your  
information.

Attachment

36040620957

RECEIVED AT THE FEC  
GCL#1588  
86 SEP 23 A8:49

September 17, 1986

Charles N. Steele, Esquire  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20004

16 SEP 23 A9:47

RECEIVED  
GENERAL COUNSEL

Dear Mr. Steele:

This Complaint against Rosemary Pooler, a candidate for Congress, and the Pooler for Congress Committee, 505 East Fayette Street, Syracuse, New York 13202, is filed with the Federal Election Commission ("FEC") pursuant to 2 U.S.C. 4437g.

This Complaint is about candidate Rosemary Pooler's failure to adhere to either truth in advertising or the requirements of federal election law.

I feel compelled to file this Complaint since Pooler is, without any authorization and completely against my wishes, using my record as a Congressman and position as a candidate in her television spots to further her own campaign. I file this Complaint to insure that Pooler's violations of the Federal Election Campaign Act ("FECA") do not reflect on my own campaign. I had previously sent a telegram to Mrs. Pooler calling on her to remove the ads and she has refused to do so.

96040520958

3 6 0 4 0 5 2 0 9 6 9

Pooler's failure to use the required disclaimer on her television ads is an attempt to conceal from the public crucial information about her ads. The disclaimer rules of the FECA are designed to provide the public with complete information on the sponsorship and authority for an ad.

The FEC must investigate Pooler's television ads using my name and stop Pooler from violating the FECA.

#### FACTS

I am the Congressman from New York's 25th congressional district and a candidate for reelection on the November 4, 1986. My district is reached through the Syracuse, N.Y. television market.

The neighboring 27th congressional district is represented by Congressman George Wortley. He is being challenged by Rosemary Pooler. Voters of that district are also in the Syracuse media market.

On or about September 2, 1986, Pooler began airing television spots that include the following message about my candidacy:

**Announcer:** Congressman Stanley Lundine brought 600 new high-tech jobs to Elmira. Congressman Sherwood Boehlert helped eight hundred layed off workers get new jobs in his district. Throughout New York, Congressmen are bringing new jobs to their districts.

**Rosemary Pooler:** If they can do it, we can do it. Just in the last year, we've lost three thousand five hundred jobs. We can turn that around. If I go to Congress, I intend to see that we do.

**Announcer:** Rosemary Pooler for Congress. She'll do the job that needs to be done.

The disclaimer on the ad states: Paid for by Friends of Rosemary Pooler.

I have at no time authorized Pooler's use in her spots of this statement about my success as a Representative for the voters of New York's 25th congressional district. Nor have I asked her to benefit my candidacy as she has in the above-described spot.

#### VIOLATIONS OF LAW

The disclaimer provisions of 2 U.S.C. 441d are designed to insure that all ads benefitting the election of a candidate state the relationship of that campaign to the group that paid for the ad.<sup>1/</sup> The law states that any ad on a broadcasting station benefitting a candidate must clearly and conspicuously display one of the following authorization notices:

if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee, or

if paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee;

if not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

2 U.S.C. 441d.

---

<sup>1/</sup> Under 11 C.F.R. 100.8(b)(17), the nature of the Pooler ad is clear: "The payment by a candidate for any public office or by such candidate's authorized committee, of the costs of that candidate's campaign materials which include information on or any reference to a candidate for Federal office and which are used in connection with volunteer activities ... is not an expenditure on behalf of such candidate for federal office, provided that the payment is not for the use of broadcasting ... or similar types of general public communication or political advertising.

86040520970

8 6 0 4 0 6 2 0 9 7 1

The Pooler ad, despite the clear requirements of 2 U.S.C. 441d, fails to state, as it must, that neither I nor my campaign authorized this ad. I did not know about this ad. My campaign did not know about this ad. This ad should be removed from the air.

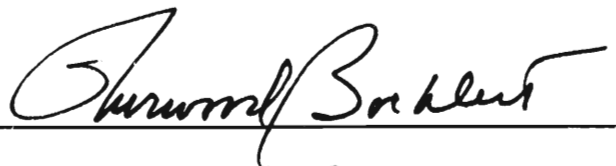
Pooler's violation of the federal statute is injuring the public, which has a right to truth in advertising about the political commercials on the air. In order to make clear that my campaign has nothing to do with this ad, and indeed disavows it, the ad must contain the required disclaimer.

CONCLUSION

The undersigned hereby requests that the FEC investigate these potential violations and enforce, as necessary, the FECA and the FEC's regulations.

VERIFICATION

The undersigned swears that the allegations and facts set forth in this Complaint are true to the best of his knowledge, information and belief.

  
\_\_\_\_\_

Subscribed and sworn to before me this 17 day of September, 1986.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_  
Charles A. Mallon  
Notary Public, Dist. of Columbia  
Commission Expires, Sept. 30, 1988

RECEIVED  
OFFICE OF THE FEC  
COMMISSIONER SECRETARY

GCHQ-10.88  
36 SEP 23 18:49  
2249

36 SEP 24 12:34

September 17, 1986

SEP 23 19:47

Charles N. Steele, Esquire  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20004

Dear Mr. Steele:

This Complaint against Rosemary Pooler, a candidate for Congress, and the Pooler for Congress Committee, 505 East Fayette Street, Syracuse, New York 13202, is filed with the Federal Election Commission ("FEC") pursuant to 2 U.S.C. 4437g.

This Complaint is about candidate Rosemary Pooler's failure to adhere to either truth in advertising or the requirements of federal election law.

I feel compelled to file this Complaint since Pooler is, without any authorization and completely against my wishes, using my record as a Congressman and position as a candidate in her television spots to further her own campaign. I file this Complaint to insure that Pooler's violations of the Federal Election Campaign Act ("FECA") do not reflect on my own campaign. I had previously sent a telegram to Mrs. Pooler calling on her to remove the ads and she has refused to do so.

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Pooler's failure to use the required disclaimer on her television ads is an attempt to conceal from the public crucial information about her ads. The disclaimer rules of the FECA are designed to provide the public with complete information on the sponsorship and authority for an ad.

The FEC must investigate Pooler's television ads using my name and stop Pooler from violating the FECA.

#### FACTS

I am the Congressman from New York's 25th congressional district and a candidate for reelection on the November 4, 1986. My district is reached through the Syracuse, N.Y. television market.

The neighboring 27th congressional district is represented by Congressman George Wortley. He is being challenged by Rosemary Pooler. Voters of that district are also in the Syracuse media market.

On or about September 2, 1986, Pooler began airing television spots that include the following message about my candidacy:

Announcer: Congressman Stanley Lundine brought 600 new high-tech jobs to Elmira. Congressman Sherwood Boehlert helped eight hundred layed off workers get new jobs in his district. Throughout New York, Congressmen are bringing new jobs to their districts.

Rosemary Pooler: If they can do it, we can do it. Just in the last year, we've lost three thousand five hundred jobs. We can turn that around. If I go to Congress, I intend to see that we do.

Announcer: Rosemary Pooler for Congress. She'll do the job that needs to be done.

The disclaimer on the ad states: Paid for by Friends of Rosemary Pooler.

I have at no time authorized Pooler's use in her spots of this statement about my success as a Representative for the voters of New York's 25th congressional district. Nor have I asked her to benefit my candidacy as she has in the above-described spot.

#### VIOLATIONS OF LAW

The disclaimer provisions of 2 U.S.C. 441d are designed to insure that all ads benefitting the election of a candidate state the relationship of that campaign to the group that paid for the ad.<sup>1/</sup> The law states that any ad on a broadcasting station benefitting a candidate must clearly and conspicuously display one of the following authorization notices:

if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee, or

if paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee;

if not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

2 U.S.C. 441d.

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<sup>1/</sup> Under 11 C.F.R. 100.8(b)(17), the nature of the Pooler ad is clear: "The payment by a candidate for any public office or by such candidate's authorized committee, of the costs of that candidate's campaign materials which include information on or any reference to a candidate for Federal office and which are used in connection with volunteer activities ... is not an expenditure on behalf of such candidate for federal office, provided that the payment is not for the use of broadcasting ... or similar types of general public communication or political advertising.

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The Pooler ad, despite the clear requirements of 2 U.S.C. 441d, fails to state, as it must, that neither I nor my campaign authorized this ad. I did not know about this ad. My campaign did not know about this ad. This ad should be removed from the air.

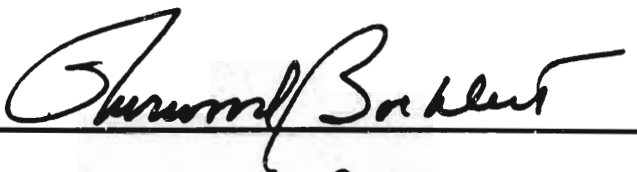
Pooler's violation of the federal statute is injuring the public, which has a right to truth in advertising about the political commercials on the air. In order to make clear that my campaign has nothing to do with this ad, and indeed disavows it, the ad must contain the required disclaimer.

#### CONCLUSION

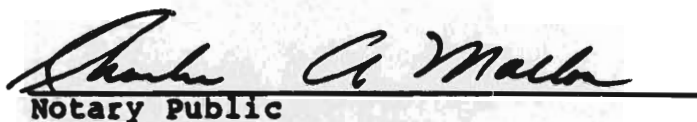
The undersigned hereby requests that the FEC investigate these potential violations and enforce, as necessary, the FECA and the FEC's regulations.

#### VERIFICATION

The undersigned swears that the allegations and facts set forth in this Complaint are true to the best of his knowledge, information and belief.

  
\_\_\_\_\_

Subscribed and sworn to before me this 17 day of September, 1986.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: Charles A. Mallon  
Notary Public, Dist. of Columbia  
Commission Expires, Sept. 30, 1988

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FEDERAL ELECTION COMMISSION

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

THIS IS THE BEGINNING OF MUR # 2249

Date Filmed 12/2/86 Camera No. --- 2

Cameraman AS



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

2/13/87

THE FOLLOWING MATERIAL IS BEING ADDED TO THE  
PUBLIC FILE OF CLOSED MUR 2249.

37017641233

**RETURN RECEIPT, REGISTERED INSURED AND CERTIFIED MAIL**

MWC 2249 GPO : 1979 300-455

MWC 2249 GPO : 1979 300-455