



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2748

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88 OCT 27 PM 12:49
COMPLAINT BEFORE
THE FEDERAL ELECTION COMMISSION

88 OCT 27 PM 12:49

IN THE MATTER OF

Concerned Citizens for
Responsible Leadership, Inc.
Friends of David Karnes
Nebraska Republican Party Committee

MUR. No. 2748

9 3 0 4 0 7 3 5 1 2 3
The Kerrey for United States Senate Committee
("Complainant"), by its Chairman, Bill Hoppner, files this
Complaint challenging violations of the Federal Election
Campaign Act of 1971, as amended ("FECA"), to U.S.C. § 431
et seq., and related regulations of the Federal Election
Commission ("FEC") 11 C.F.R. § 100.1 et seq., by the Concerned
Citizens for Responsible Leadership, Inc. ("CCRL"), the Friends
of David Karnes Committee ("Karnes Committee"), Senator Karnes'
authorized campaign committee, and the Nebraska State
Republican Party Committee ("Republican Party") (referred to
collectively hereinafter as "Respondents").

DISCLOSURE OF RELATIONSHIP OF
CCRL AND THE KARNES CAMPAIGN

Complainant seeks an immediate investigation by the FEC
into the establishment and activities of CCRL, a "political"
committee within the meaning of § 431(4) of the FECA. CCRL,
which is registered with the FEC, has also been incorporated
under the laws of Nebraska.

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CCRL was organized for the principal purpose of defeating the election bid of former Governor Robert Kerrey, ("Kerrey"), the Democratic candidate for United States Senate. CCRL is now making expenditures toward this goal, well in excess of the \$1000 limit for non-multicandidate political committees and therefore in violation of section 441a(a)(5) of the FECA.^{1/} According to one account, the committee is distributing 50,000 copies of an eight-page tabloid critical of Kerrey's record. Exhibit 1.

Both the Karnes campaign and CCRL have denied any "connection" to each other. This denial is made, apparently, to indicate that CCRL is making "independent" expenditures which are not subject to limitation. 2 U.S.C. § 431 (17). Yet based on the facts surrounding the formation and direction of the committee, CCRL's claimed "independence" from the Karnes Committee is pure fraud. CCRL's counsel, the same attorney who prepared its incorporation, is John Evans -- the husband of the Karnes Committee's Campaign Manager, Terri Evans.

This relationship between the Karnes Committee's chief agent, and the incorporator and legal advisor of CCRL raises obvious questions about the "independence" of the two

^{1/} CCRL, recently established, could not satisfy the requirements of multi-candidate committee status in this 1988 election cycle.

Committees. The Karnes Committee defends its position by the claim that Lawyer Evans accepted and advised this client without disclosure to Campaign Manager Evans; and the reason for this discretion is said to be the attorney-client privilege. (The Spousal Privilege will doubtless be invoked next, allowing one Evans to refuse testifying in relation to the other.)2/

There is also evidence that CCRL is coordinating its activities with the Republican Party. In a recent newscast on KMTV in Nebraska the Republican Party Chairman stated, in commenting on the CCRL activities: "As long as we present the facts . . . ". Then, hastily, the Chair sought in vain to correct himself: "I say we, not myself, because I don't know". Exhibit 2. The "slip of the tongue" was reported by the press as a suggestion of collusion, and properly so. Party committees are, of course, precluded from making independent expenditures on behalf of a general election nominee. By law, the party operates on an agent of a Senate candidate, and as an agent, any relationship with an independent committee

2/ The Karnes Committee, moreover, has been amused to hint at involvement in "independent" expenditure activities amid denials of any "connections" with CCRL. Thus, Karnes spokesman Behler is reported to state: "if they (the Kerrey campaign) didn't like that (apparently the CCRL independence expenditure campaign), I can tell you that they haven't seen anything yet, believe me." Lincoln Star, October 7, 1988 at p. 14. Exhibit 3.

supporting that candidate destroys, that independence.

11 C.F.R. § 110.7(b)(4). Moreover, CCRL, acting as an agent of the Party, is making coordinated party expenditures in support of the Karnes Committee, which must be aggregated and reported by the Republican Party as expenditures under section 441a(d) of the FECA. If these expenditures are in excess of the permissible amounts the Republican Party may spend in support of the Karnes Committee, the Party is in violation of these spending limits.

CCRL'S EXPENDITURES DO NOT MEET THE TEST FOR INDEPENDENCE

Applicable Law

The FECA adopts the definition of "independent expenditure" articulated by the Supreme Court, in Buckley v. Valeo, 424 U.S. 1 (1976), that is, any expenditure which:

1. Expressly advocates the election or defeat of a clearly identified candidate; and
2. Is made without cooperation or consultation with or at the request or suggestion of any candidate or his authorized committee or agent.

2 U.S.C. 431(17).

While there is certainly no question that the literature being distributed by CCRL is expressly advocating Kerrey's defeat, there is ample question of "cooperation" or "consultation" with a candidate's (Karnes') "agents".

"Cooperation" or "consultation" is found to occur by law whenever there is "any arrangement, coordination or direction" by the candidate, or his or her agents. The word "any" carries great significance. It means that a candidate need not have planned an independent expenditure or "ordered" that it be made; only that the candidate has in some way assisted in its making. This assistance could take many forms, ranging from mere approval to active involvement in the details.

Moreover, an expenditure is presumed by law to be made in cooperation or consultation with an authorized committee when (1) the expenditure is based on information provided by the candidate or candidate's agent;^{3/} or (2) the expenditure is made "by or through" a person described in 11 C.F.R.

§ 109.1(b)(4)(i)(B), who maintains or maintained a working or formal relationship to the candidate or candidate's authorized

^{3/} An "agent" is defined as any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate, or means any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures. 11 C.F.R. § 109.1(b)(5).

committee. 11 C.F.R. § 109.1(b)(4)(i). Advisory Opinion 1979-80 1 Fed Elec. Camp. Fin. Guide (CCH) ¶ 5469. This "presumption" applies in this case.

As Campaign Manager, Terri Evans clearly is an "agent" of the Karnes Committee. In that capacity, she has express authority to authorize expenditures by that Committee, and she is compensated by the Committee for the exercise of this and other management responsibilities.

Mrs. Evans is also married to and in daily contact with the attorney to CCRL who, among other professional efforts on his behalf, brought it into legal existence. This "connection" between the two committees is hardly a casual one. It raises on its face the question of whether, through this connection, Karnes provided "any arrangement, coordination or direction" to CCRL. This is a question of fact. Only a Commission investigation can resolve it.

In addition, there are grounds for applying the "presumption" of non-independence under FEC regulations. The activities of Lawyer Evans on behalf of CCRL, while spouse to Campaign Manager Evans, triggers that presumption which applies when an "independent expenditure" is made through a candidate's agent.

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In Advisory Opinion 1979-80, the FEC considered the question of whether a spouse also qualifies as an agent by virtue of marriage to an agent of a campaign committee. The FEC determined that the spouse under certain circumstances would be considered an agent, including: if the spouse participates or assists in the agent's consulting services, or has a business relationship with the agent concerning his political services. Advisory Opinion 1979-80. This is an open question here, where it may reasonably appear that the Evans were working in tandem, perhaps where Terri caused John to be hired to advise CCRL. Should the Evans have ever worked together, at any time, in support of the Karnes campaign, the presumption recognized in Advisory Opinion 1979-80 would apply. This collaboration between spouses could be no more than their attendance at Karnes' fundraising events, or the participation by John Evans in any Karnes' volunteer activities at his wife's request. The participation by Mr. Evans in the campaign with the knowledge and encouragement of Mrs. Evans makes him, in effect, an "agent" by marriage under Advisory Opinion 1979-80.

Further, the standard for defining "agency" by a spouse may be more inclusive here. The Commission in Advisory Opinion 1979-80 considered the activities of a political consultant to a campaign and the consultant's spouse. This case involves the

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campaign manager, the key official in the campaign, and the Campaign Manager's spouse. The requirement of true "independence" demands that, in these circumstances, the agency of one spouse (Terri Evans) carry over against the other (John), prohibiting him from making any claim to "independence."

This view was forcefully adopted in FEC v. National Conservative Political Action Committee, ("FEC v. NCPAC"). 647 F. Supp. 987 (S.D.N.Y. 1986). There, the district court stated that the significance of the role of a campaign worker or consultant in a campaign has considerable influence on the determination of whether an agency relationship exists. Id. at 992. In that case, the key political strategist for the candidate's authorized campaign committee also worked as the principal consultant for the independent expenditures committee. The Court distinguished this situation from the hypothetical case relied on by the defendant to assert independence, which involved an advertising firm or pollster, with no central strategic role in the campaign. The Court held that while the presence of a vendor shared by the committees would not defeat independence, the standard for judging independence in a case where the same key campaign strategist was employed was clearly higher. Id. at 992.

Whether John Evans is an agent of the Karnes Committee must be considered in light of the key strategic role of Terri Evans in the Karnes campaign. Generally, a campaign manager plays a central role in formulating and directing the strategy of the reelection effort, as well as overseeing day-to-day activities. Moreover, she has responsibility for coordinating the message of the campaign, approving all activities conducted by staff and volunteers, and authorizing expenditures of the committee. Through his relationship with Terri Evans, John Evans has been in a position to participate and assist in Karnes Committee activities, and to receive information regarding strategy and message.

Even if John Evans is not currently consulting with Terri Evans regarding Karnes Committee activities, it is quite likely that previous communications between them were sufficient to establish a high degree of coordination between the two committees, thus raising the question of whether John Evans is acting as an agent of the Karnes Committee in organizing CCRL.

Thus the relationship of the Evans brings CCRL's "independence" into question in two ways. There is, first, the concern that through this relationship, now or at any time during the campaign, Terri Evans discussed "plans, projects or needs" of the Karnes campaign with her husband. This is

likely, not speculative. The Commission must direct an investigation to this question.

Second, the Evans couple, by this marriage, raise the "presumption" of non-independence under Commission regulations. As a result, CCRL may be presumed to have made expenditures "by or through" an agent of the Karnes campaign -- John Evans, the husband of Karnes' Campaign Manager.

CCRL is Acting in Coordination with the State Republican Party

CCRL appears to be coordinating its activities with the State Republican Party. This coordination was confirmed by the Republic Party Chairman's statement, "[as] long as we present the facts," when referring to the effort by CCRL to distribute the anti-Kerrey tabloids. Exhibit 2. Immediately recognizing his error in linking CCRL and the Republican Party, he attempted to distance the Party from the CCRL campaign.

Party committees are precluded from making independent expenditures on behalf of a party nominee in a general election. 11 C.F.R. § 110.7(b)(4). Any contact between CCRL and the state party, which is an agent of the Karnes campaign by law, 2 U.S.C. § 441a(d), destroys the "independence" of CCRL.

Further, all expenditures by CCRL in this effort must be counted against the Republican Party's coordinated expenditures made in connection with the general election of Senator Karnes. 2 U.S.C. § 441a(d). These expenditures must be reported as such and may not exceed the limits prescribed under section 444a(d).

CONCLUSION

Attempts such as those of the Respondents to evade spending limits clearly undermine the letter, as well as the spirit, of the election laws. Each campaign for federal office is permitted to raise and spend sufficient funds to convey its message to the public. Moreover, the political parties may make expenditures to support the election of their nominees. The subversion of these laws and attempt to make prohibited expenditures in excess of these prescribed amounts raises serious questions about the integrity and judgment of the candidate, who is benefitting from and most certainly condoning them, Senator Karnes.

On the basis of the foregoing, the Kerrey Committee requests that the FEC: (1) conduct a prompt and immediate investigation of the facts and legal conclusions stated in this Complaint; (2) enter into prompt conciliation with Respondents

to remedy the violation alleged in this complaint and, most importantly, to ensure that no further violations occur; and (3) impose any and all penalties grounded in violations alleged in this Complaint.

RESPECTFULLY SUBMITTED,


Chairman

Kerrey for United States
Senate Committee

SUBSCRIBED AND SWORN BEFORE ME
ON THIS 26 DAY OF Oct, 1988.


NOTARY PUBLIC

 GENERAL NOTARY - State of Nebraska
ROBERT E. WEAR, JR.
My Comm. Exp. 9-10-91

Omaha World-Herald

A.M. 10/7 p 19

Husband of Karnes Assistant Incorporated Anti-Kerrey PAC

By Henry J. Cordes
WORLD-HERALD BUREAU

Lincoln — Incorporation papers for a political action committee that is criticizing former Gov. Bob Kerrey were filed by the husband of U.S. Sen. Dave Karnes' campaign manager. A committee official said, however, that the group is not affiliated with Karnes' election campaign.

The committee — Concerned Citizens for Responsible Leadership Inc. — is distributing 50,000 copies of an eight-page tabloid that attempts to link Dem-

ocrat Kerrey, Karnes' Republican opponent in the Senate race, to the 1983 failure of Commonwealth Savings Co.

The committee's articles of incorporation were filed this week in the Nebraska Secretary of State's Office by Lincoln attorney John Evans, husband of Karnes' campaign manager, Terri Evans.

Jack Hart, executive director of the committee and a former aide to Gov. Charles Thone, said John Evans was hired for strictly legal work "and has

Please turn to Page 22, Col. 1

PAC Linked To Husband Of Karnes Aide

• Continued from Page 19

no connection with the policies or decision-making."

The two other incorporators are Jim Hines of Lincoln, treasurer, and John Graf of Lincoln.

Karnes campaign spokesman Brent Bahler repeated an earlier statement that the Karnes campaign is not connected to Hart's group. He said that because of attorney-client confidentiality, Evans never told his wife about his work with the group.

Thursday, two men who had investigated the Commonwealth collapse called the political action committee's tabloid "mean-spirited and scurrilous."

Former Special Attorney General David Domina of Norfolk and John Miller, a former Nebraska banking director and Omaha city councilman, criticized Hart in a letter. They called Hart's attack of Kerrey an example of "the real danger of uninformed, imbalanced partisanship."

Hart defended his publication Thursday. He said Domina and Miller, both Democrats, were biased for Kerrey. Domina has endorsed Karnes over Kerrey, but Hart said that in the Commonwealth matter, Domina is protecting Kerrey.

Miller and Domina, appointed by Kerrey to investigate the failure of Commonwealth, wrote that they were offended by the suggestion in Hart's publication that investigators only wanted to find someone to blame and weren't concerned about facts.

"It has been our experience that absolutely nothing good ever comes from such scurrilous and mean-spirited attacks, and the end result is usually to discourage good people from becoming involved in our political process," they wrote.

Though the publication is aimed at Kerrey, they wrote, it also casts doubt upon some others, including Cynthia Milligan, Gov. Orr's current banking director. Mrs. Milligan was a partner in the law firm of Lincoln attorney William Wright, a friend of Kerrey's who was a major owner of State Security Savings Co., which collapsed after the Commonwealth failure.

KMTV, CHANNEL 3, DC 1, 1988, 6:00 PM NEWSCAST, JOE JORDAN
REPORTING

In the last few days Bob Kerrey has been accused of taking money from a special interest group associated with Vietnam War protester Jane Fonda. He's been maligned for his role in the Commonwealth investigation and now critics say the Prairie Life Center, one of Kerrey's companies in Lincoln got money from the state, because when Kerrey was Governor, he in effect lied about his involvement with the firm.

BOB KERREY

"It's old politics."

JOE JORDAN

And, Kerrey is getting tired of all the charges and he says his accusers are in cahoots. Both the Commonwealth and Prairie Life charges coming from a group known as Concerned Citizens Against Kerrey. Spokesman Jack Hart, who denies any connection to the Karnes campaign, won't say who those concerned citizens are.

JACK HART

"Some of them perceive Bob Kerrey as being a very vindictive individual. They are not in positions to be publicly, I guess you'd say, at odds with him."

JOE JORDAN

And, Jack Hart denies any ties to Karnes or the state GOP. But, this morning when state GOP chairman Norm Riffel was asked about Kerrey, Commonwealth, and Hart, Riffel used the word we, and then corrected himself. Listen.

NORM RIFFEL

"As long as we present the facts, as I understand this...as I say we, not myself, because I don't know...I haven't even seen this copy of the information..."

JOE JORDAN

And, as for the Kerrey Commonwealth, Prairie Life information, Riffel says despite investigations that have cleared Kerrey, it's up to the voters to decide what's true. In the end, it's also up to the voters if the Senate campaign has turned inquisitive or downright nasty.

Commonwealth investigators criticize anti-Kerrey report

From The Associated Press

Two former officials who investigated the collapse of Commonwealth Savings Co. say a political attack on former Gov. Bob Kerrey was factually inaccurate, "scurrilous and mean-spirited."

Former Bankrupt Director John Miller and former Special Assistant Attorney General David Domina criticized the report from a group headed by Jack Hart of Lincoln.

Hart was an aide to former Republican Gov. Charles Thone, the man Kerrey defeated in 1983 to win the governorship.

Kerrey is challenging incumbent Republican U.S. Sen. David Karnes.

The "Miller-Domina Report" was the first official investigation of the 1983 Commonwealth collapse. Both men are Democrats, although Domina has endorsed Karnes in the 1988 Senate race.

"At no time during our investigation did we attack or attempt to blame the Thone administration, of which you were a part, for the Commonwealth

tragedy," Miller and Domina told Hart in the letter.

"For you, of all people, to suggest that we were only interested in discovering someone to blame, and not interested in discovering all the facts, is particularly offensive."

In an interview with The Associated Press, Miller said he was surprised by Hart's release.

"If we were looking for someone to blame, the seeds for the Commonwealth failure were there during the Thone administration. . . . We didn't blame Charley Thone because it wasn't his fault and it wasn't Bob Kerrey's fault," Miller said.

Karnes spokesman Brent Bahler said the Karnes campaign wasn't aware in advance of the attack on Kerrey.

However, Bahler said Wednesday night that "if they (the Kerrey campaign) didn't like that, I can tell you that they haven't seen anything yet, believe me."

88040735137



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 28, 1988

SPECIAL DELIVERY

Bill Hoppner, Chairman
Kerry For Senate Committee
7602 Pacific
Omaha, NE 68114

RE: MUR 2748

Dear Mr. Hoppner:

This letter acknowledges receipt on October 27, 1988, of your complaint against Friends Of Senator Dave Karnes and Jon Hoffmaster, as treasurer, the Nebraska Republican Federal Campaign Committee and Dale E. LaBaron, as treasurer, and the Concerned Citizens For Responsible Government, Inc. and Jim Hines, as treasurer, alleging violations of the Federal Election Campaign Act. A staff member has been assigned to analyze your allegations. The respondents will be notified of this complaint within 24 hours. You will be notified as soon as the Commission takes final action on your complaint. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Please be advised that this matter shall remain confidential in accordance with 2 U.S.C. Sections 437g(a)(4)(B) and 437g(a)(10)(A) unless the respondents notify the Commission in writing that they wish the matter to be made public.

Sincerely,

Lawrence M. Noole
General Counsel

Sy: Lois G. Kerner
Associate General Counsel

Enclosure
Procedures

89040735138



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 28, 1988

SPECIAL DELIVERY

Jim Hines, Treasurer
Concerned Citizens For a
Responsible Government, Inc.
520 N. 81st Street
Lincoln, NE 68521

RE: MUR 2748
Concerned Citizens For
Responsible Government,
Inc. and Jim Hines, as
treasurer.

Dear Mr. Hines:

This letter is to notify you that on October 27, 1988, the Federal Election Commission received a complaint which alleges that Concerned Citizens For Responsible Government, Inc. and you, as treasurer, 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 2748. 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 Concerned Citizens For Responsible Government in this matter. 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. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. You are encouraged to respond to this notification promptly. In order to facilitate an expeditious response, we have enclosed a pre-addressed, postage paid, special delivery envelope. If no response is received within 15 days, the Commission may take further action based on the available information.

The complaint may be dismissed by the Commission prior to the receipt of your response if the evidence submitted does not indicate that a violation of the Act has been committed. Should the Commission dismiss the complaint, you will be notified by overnight express mail.

This matter will remain confidential in accordance with Section 437g(a)(4)(B) and Section 437g(a)(1)(A) of Title 2 unless you notify the Commission in writing that you wish the matter to be made public.

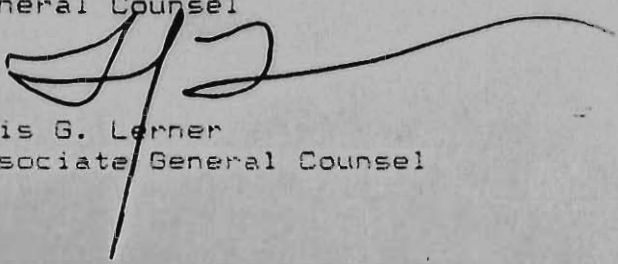
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If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other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

If you have any questions, please contact Patty Reilly at (202) 176-5690.

Sincerely,

Lawrence M. Noble
General Counsel

By: 
Lois G. Lerner
Associate General Counsel

Enclosures
Complaint
Procedures
- Enclosure
176-5690

89040735140



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 28, 1988

SPECIAL DELIVERY

Dale E. LaBaron, Treasurer
Nebraska Republican Federal
Campaign Committee
421 S. 9th Street
Lincoln, NE 68508

RE: MUR 2748
Nebraska Republican
Federal Campaign
Committee and Dale E.
LaBaron, as treasurer

Dear Mr. LaBaron:

This letter is to notify you that on October 27, 1988, the Federal Election Commission received a complaint which alleges that the Nebraska Republican Federal Campaign Committee and you, as treasurer, 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 2748. 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 the Nebraska Republican Federal Campaign Committee in this matter. 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. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. You are encouraged to respond to this notification promptly. In order to facilitate an expeditious response, we have enclosed a pre-addressed, postage paid, special delivery envelope. If no response is received within 15 days, the Commission may take further action based on the available information.

The complaint may be dismissed by the Commission prior to the receipt of your response if the evidence submitted does not indicate that a violation of the Act has been committed. Should the Commission dismiss the complaint, you will be notified by overnight express mail.

This letter will remain confidential in accordance with Section 437g(a)(4)(B) and Section 437g(a)(2)(A) of Title 2 unless you notify the Commission in writing that you wish the matter to be made public.

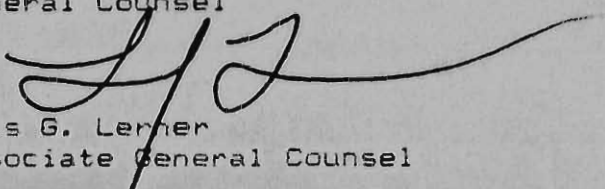
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If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other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

If you have any questions, please contact Patty Reilly at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel


By: Lois G. Lerner
Associate General Counsel

Enclosures
Complaint
Procedures
Envelope
Form

89040735142



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 28, 1988

SPECIAL DELIVERY

Jon Hoffmaster, Treasurer
Friends Of Senator Dave
Karnes
625 N. 109th Plaza
Omaha, NE 68154

RE: MUR 2748
Friends Of Senator
Dave Karnes and Jon
Hoffmaster, as treasurer

Dear Mr. Hoffmaster:

This letter is to notify you that on October 27, 1988, the Federal Election Commission received a complaint which alleges that Friends Of Senator Dave Karnes and you, as treasurer, may have violated certain sections of the Federal Election Campaign Act of 1971, as amended (FECA). A copy of the complaint is enclosed. We have assigned this matter MUR 2748. 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 Senator Dave Karnes in this matter. 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. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. You are encouraged to respond to this notification promptly. In order to facilitate an expeditious response, we have enclosed a pre-addressed, postage paid, special delivery envelope. If no response is received within 15 days, the Commission may take further action based on the available information.

The complaint may be reviewed by the Commission prior to the receipt of your response if the evidence submitted does not indicate that a violation of the Act has been committed. Should the Commission decide the complaint, you will be notified by overnight express mail.

This matter will remain confidential in accordance with Section 437g(a)(4)(B) and Section 437g(a)(1)(A) of Title 2 unless you notify the Commission in writing that you wish the matter to be made public.

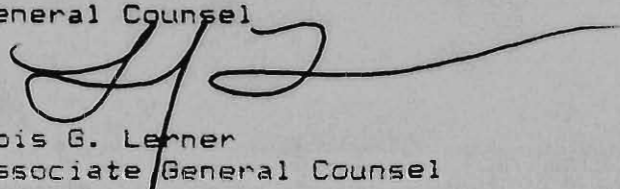
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If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other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

If you have any questions, please contact Patty Reilly at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel


By: Lois G. Lerner
Associate General Counsel

Enclosures
Complaint
Procedures
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Form

89040735144



FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JOSHUA MCFADDEN *JM*

DATE: NOVEMBER 2, 1988

SUBJECT: MUR 2748
FIRST GENERAL COUNSEL'S REPORT
SIGNED OCTOBER 31, 1988

The above-captioned report was received in the Secretariat at 12:49 p.m. on Tuesday, November 1, 1988 and circulated to the Commission on a 24-hour no-objection basis at 4:00 p.m. on Tuesday, November 1, 1988.

There were no objections to the report.

89040735145

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

NOV - 1 PM 12:49

SENSITIVE

EXPEDITED FIRST GENERAL COUNSEL'S REPORT

MUR: 2748

Staff Person: Reilly

COMPLAINANT: Bill Hopper, Chairman of Kerry for United States Senate Committee

RESPONDENTS: Concerned Citizens for Responsible Government, Inc., and Jim Hines, as treasurer

Friends of Dave Karnes and Jon Hoffmaster, as treasurer

Nebraska Republican Federal Campaign Committee and Dale E. LeBaron, as treasurer

SUMMARY OF ALLEGATIONS

The Office of the General Counsel received a complaint on October 28, 1988, against Concerned Citizens for Responsible Government, Inc., and Jim Hines as treasurer ("Concerned Citizens")*/; Friends of Dave Karnes and Jon Hoffmaster, as treasurer, ("Karnes Committee"); and the Nebraska Republican Federal Campaign Committee and Dale E. LeBaron, as treasurer, ("State Party"). The complaint alleges that purported independent expenditures made by Concerned Citizens were made in coordination and in consultation with both the Karnes Committee and the State Party.

PRELIMINARY LEGAL ANALYSIS

The Act defines an independent expenditure as ". . . an expenditure by a person expressly advocating the election or

*/ The complaint incorrectly identifies this entity as Concerned Citizens for Responsible Leadership, Inc.

defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate."

2 U.S.C. § 431(17). See 11 C.F.R. § 109.1. Additional requirements are included in the Regulations. The Act places no limitations on the amounts of these expenditures; however, for an expenditure to be independent, all elements of this definition must be satisfied. If these elements are not satisfied, the purported independent expenditures are viewed as in-kind contributions subject to the limitations of 2 U.S.C. § 441a(a). Thus, if the expenditures in question are not independent, there may be reason to believe that all three committees may have violated 2 U.S.C. § 441a.

In the instant case, the complaint presents a factual issue regarding whether the expenditures made by Concerned Citizens were, in fact, independent. In order to resolve this factual issue, respondents must be afforded the statutorily mandated fifteen day response period. Accordingly, this Office will report to the Commission at the expiration of that period.

Lawrence M. Noble
General Counsel

10/31/88
Date

BY:


Lois G. Lerner
Associate General Counsel

Staff Person: Patty Reilly

066 901
HAND DELIVERED
FEDERAL ELECTION COMMISSION
MAIL ROOM

88 NOV -4 AM 10:56

Jim Hines, Treasurer
Concerned Citizens for Responsible Government
445 North 66th Street Suite 6
Lincoln, Nebraska 68505

November 3, 1988

Federal Election Commission
999 E Street, NW
Washington, DC 20463

RE: Complaint MUR 2748

Dear Commission Representative:

This letter is to present to you my initial response to the complaint filed against our organization and others by the Kerrey for United States Senate Committee.

At this point I have not retained a lawyer and am responding in good faith that as the facts concerning our conduct are examined you will find that the complaint is a frivolous political ploy employed by the Kerrey Campaign Committee in an attempt to discredit our organization and as well as Senator Dave Karnes and his campaign committee.

My initial contact with CCRG (Concerned Citizens for Responsible Government Inc.) was when Jack Hart contacted me asking me to consider becoming treasurer for the organization he was creating to oppose Robert Joseph Kerrey in his bid for the United States Senate.

Jack and others had been meeting for several weeks and I was invited to a meeting where we discussed what formal organization we needed to complete in order to be in compliance with election laws etc. Since none of us are lawyers we decided to contact a lawyer for advice on what steps needed to be taken to incorporate and to form a PAC (political action committee).

Mr. Hart has been a neighbor and long time friend of Roland Luedtke (a recent Mayor of Lincoln, Nebraska). Mr. Hart had served as City Lobbyist while Mr. Luedtke was mayor. Mr. Luedtke and Mr. Hart had also worked in the Governor Charles Thone administration while Mr. Thone was governor of Nebraska.

Mr. Luedtke is associated with the law firm McHenry & Flowers. It was natural for Mr. Hart to go to his long time friend for assistance when legal counsel was needed.

Mr. John Evans, who is named in the complaint, is a lawyer in the same firm. It was Mr. Evans whom Mr. Hart and I met with one morning seeking legal counsel to determine what steps were necessary to file papers of incorporation and to file with the FEC. Mr. Evans prepared the incorporation papers and obtained for us the FEC materials which give instructions for filing various reports during an election, etc.

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I have never seen Mr. Evans at any meetings where the CCRG committee planned or conducted its activities. His only contact with our organization has been with regard to the formation of our corporation and the filing with the FEC.

I have given Mr. Evans a copy of the complaint which I received from the FEC yesterday. In discussing the situation with Mr. Evans he told me he has not discussed the activities of the CCRG with his wife who holds some position in the Dave Karnes for United States Senate Committee.

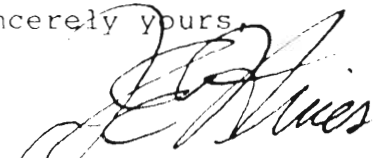
Because Mr. Evans has not been privy to any of the plans or activities of the CCRG it would seem he would not have much to say to his wife regarding the CCRG except that an organization had filed incorporation papers and formed a PAC called Concerned Citizens Against Kerrey.

It is my opinion that the Kerrey Campaign is using this threat (of FEC action against the three named defendants) as a political tactic since they made a big news item of the filing with the local newspapers and got plenty of free promotion for their candidate in the media.

It is my opinion the local newspapers reporting of the campaign is what should be investigated by the FEC. Reporters who have been covering the race are married to people very close to the Kerrey campaign organization. The coverage has been very one sided and in my opinion amounts to substantial free political advertising for the Kerrey campaign. It would seem to me that media employees who are spouses of individuals who are actively involved in federal campaign races should be prohibited from covering the race. By selectively covering campaign events and by coloring the news to make one candidate look good and another one look bad the media can make unreported (to the FEC) campaign contributions which significantly affect the races outcome.

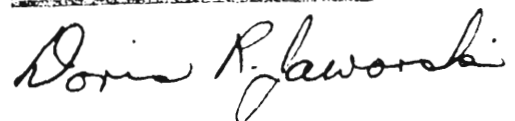
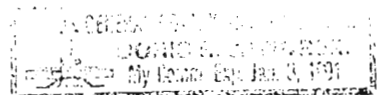
I hope this brief explanation helps you to properly evaluate the substance of the complaint and to deal with it accordingly.

Sincerely yours,



Jim Hines, Treasurer
Concerned Citizens for Responsible Government

cc\ Dave Karnes for United States Senate Committee
cc\ Nebraska Republican Party
cc\ McHenry & Flowers Attorneys
cc\ Various Media



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O6C# 1035

JANN L. OLSTEN
EXECUTIVE DIRECTOR

11:54 PM 11 NOV 68

05-1050-2000

Please file the enclosed document, "Statement of Designation of Counsel", as appropriate. This document accompanies the FEC Complaint filed on October 27, 1988 by the Kerrey for U.S. Senate Committee in the matter of Friends of David Karnes, Nebraska Republican Party Committee. MUR No. 2748.

Sincerely,

Sincerely,

Dawn M. Sands

Dawn M. Sands
Executive Assistant

STATEMENT OF DESIGNATION OF COUNSEL

NR 2748

NAME OF COUNSEL: Ben Ginsburg

ADDRESS: 1 National Republican Senatorial Committee

440 First Street NW

Suite 600

Washington, DC 20001

TELEPHONE:

202 342 0202

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.

November 3, 1988

DATE

შენიშვნები

Don D. Hoffmaster, Treasurer

RESPONDENT'S NAME: Friends of Senator Dave Karnes and David K. Karnes

ADDRESS: 626 North 109th Plaza

Omaha, NE 68154

LONG PHONE:

BUSINESS PHONE: 402 496 9337

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF) MUR. NO. 2748
)
NEBRASKA REPUBLICAN FEDERAL) REQUEST FOR ADDITIONAL TIME
CAMPAIGN COMMITTEE and) IN WHICH TO RESPOND
DALE E. LEBARON, TREASURER)

The Federal Election Commission letter of October 28, 1988, enclosing the Complaint filed by the Chairman of Kerrey for United States Senate Committee, was received by these respondents on November 2, 1988.

Respondents respectfully request an extension of thirty (30) days from November 17, 1988, to December 17, 1988, in which to file their response on the issue of whether the Commission should find reason to believe that the Federal Election laws have been violated.

The request for the thirty (30) days extension is made upon good cause for the following specific reasons:

1. The complaint was received on November 2 which was only six (6) days before the November 8 Election Day. As a result, representatives of the respondents and other witnesses were not readily available in order to prepare an appropriate response.

2. Federal Election Commission complaints are not common in this state and there are few persons experienced in representing interest of respondents in such proceedings. As a result, it will take more time to prepare an appropriate response to the Complaint in these proceedings.

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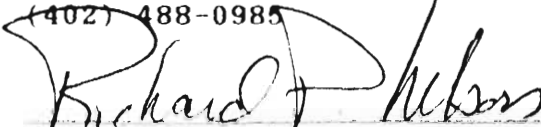
3. Counsel has been unable to contact all persons necessary to the preparation of an accurate and adequate response.

It may not be necessary to use the entire thirty (30) days requested. The granting of the thirty (30) day extension, however, should eliminate a request for an additional extension.

Respectfully submitted,

NEBRASKA REPUBLICAN FEDERAL
CAMPAIGN COMMITTEE and DALE E.
LEBARON, TREASURER

PETERSON NELSON JOAHNNS MORRIS
& HOLDEMAN
and Richard P. Nelson, #13034
1560 South 70th Street
P.O. Box 5526
Lincoln, NE 68505-0526
(402) 488-0985


Richard P. Nelson

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STATEMENT OF DESIGNATION OF COUNSEL

RECEIVED
FEDERAL ELECTION COMMISSION
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MUR 2748

88 NOV 21 AM 11:45

NAME OF COUNSEL: Richard P. Nelson
ADDRESS: Peterson Nelson Johanns Morris & Holdeman
1560 South 70th Street
P.O. Box 5526
Lincoln, NE 68505-0526

TELEPHONE: (402) 488-0985

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.

November 17, 1988
Date

Harry M. LeBaron
Signature *Assistant Treasurer*

RESPONDENT'S NAME: Nebraska Republican Federal Campaign Committee
ADDRESS: and Dale E. LeBaron, Treasurer
421 South 9th Street, Suite 102
Lincoln, NE 68508

HOME PHONE: (402) 423-1166

BUSINESS PHONE: (402) 475-2122

88 NOV 21 PM 12:10

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OGC 1135

National Republican Senatorial Committee

BENJAMIN L. GINSBERG
LEGAL COUNSEL

88 NOV 21 PM 3:26

November 21, 1988

Patty Reilly, Esquire
Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: Matter Under Review 2748
Friends of Senator David Karnes Committee
Jon D. Hoffmaster, Treasurer

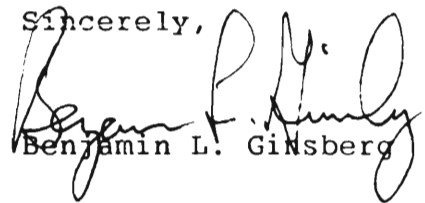
Dear Ms. Reilly:

To confirm our telephone conversation of earlier this week, I am counsel for the respondents in the above-captioned Matter Under Review. In that capacity, I respectfully request an extension of 30 days in which to answer the Complaint received earlier this month from the Commission. Accordingly, the response would be due on December 14, 1988.

This extension is requested because I have just been retained by the Respondents and am currently in the midst of several recourts. The additional time is needed to be able to talk with the Respondents about the allegations and prepare a response.

Thank you for your consideration.

Sincerely,


Benjamin L. Ginsberg

cc: Jon D. Hoffmaster



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 28, 1988

Benjamin Ginsburg, Esquire
National Republican Senatorial Committee
440 First Street, N.W.
Suite 600
Washington, D.C. 20001

Re: MUR 2748
Friends of Dave Karnes
and Jon Hoffmaster, as
treasurer

Dear Mr. Ginsburg:

The Office of the General Counsel is in receipt of your recent letter requesting a thirty day extension of time to respond to the complaint in the above-captioned matter. After considering the circumstances as detailed in your letter, this Office will grant the requested extension. Accordingly, your response is due no later than December 14, 1988.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

A handwritten signature in dark ink, appearing to be "L. Lerner", is written over the typed name of Lois G. Lerner.

By: Lois G. Lerner
Associate General Counsel

93040735156



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 1, 1988

Richard P. Nelson
Peterson, Nelson, Johanns, Morris and Holdeman
1560 South 70th Street
P.O. Box 5526
Lincoln, NE 68505-0526

Re: MUR 2748
Nebraska Republican Federal
Campaign Committee and
Dale E. LeBaron, as treasurer

Dear Mr. Nelson:

The Office of the General Counsel is in receipt of your recent letter requesting an extension of time to respond to the complaint in the above-captioned matter. After considering the circumstances as detailed in your request, this Office will grant the requested thirty day extension. Accordingly, your response is due no later than December 17, 1988.

If you have any questions please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690,

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

93040735157

BEFORE THE FEDERAL ELECTION COMMISSION

88 NOV 30 AM 9:32

In the Matter of)
)
Concerned Citizens for Responsible)
Government, Inc., and Jim Hines, as)
treasurer)
Friends of Dave Karnes and)
Jon Hoffmaster, as treasurer)
Nebraska Republican Federal)
Campaign Committee and)
Dale E. LeBaron, as treasurer)

MUR 2748

SENSITIVE

GENERAL COUNSEL'S REPORT

The Office of the General Counsel received a complaint on October 27, 1988, against Concerned Citizens for Responsible Government, Inc., and Jim Hines as treasurer, ("Concerned Citizens")^{*/}; Friends of Dave Karnes and Jon Hoffmaster, as treasurer, ("Karnes Committee"); and the Nebraska Republican Federal Campaign Committee and Dale E. LeBaron, as treasurer, ("State Party"). The complaint alleges that purported independent expenditures made by Concerned Citizens were made in coordination and in consultation with both the Karnes Committee and the State Party. Pursuant to the Commission's expedited procedures, respondents were notified of the complaint on October 28, 1988.

On November 4, 1988, this Office received an initial response from Concerned Citizens. Additionally, counsel for the Karnes Committee contacted this Office requesting a thirty day extension of time, citing the press of several election recounts. Under this circumstance, this Office granted the requested

^{*/} The complaint incorrectly identified this entity as Concerned Citizens for Responsible Leadership, Inc.

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extension until December 14, 1988. After receiving and analyzing all responses, this Office will report to the Commission with appropriate recommendations.

Lawrence M. Noble
General Counsel

11-29-88
Date

By: 
Lois G. Lerner
Associate General Counsel

Staff person: Patty Reilly

82040735159

06C 1304

National Republican Senatorial Committee

BENJAMIN L. GINSBERG
LEGAL COUNSEL

December 14, 1988

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Lawrence M. Noble, Esquire
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Attn: Patty Reilly, Esquire

RE: MUR 2748

Dear Mr. Noble:

66 DEC 14 PM 12:47

This letter and the attached affidavits of John Evans, a Lincoln, Nebraska attorney, and Terri Evans, campaign manager for David Karnes in the 1988 Senate election in Nebraska, are submitted on behalf of the Friends of Senator David Karnes and Jon D. Hoffmaster, as Treasurer, in response to a Complaint filed with the Federal Election Commission ("Commission"). The Complaint, filed by the chairman of the campaign committee supporting Mr. Karnes' opponent against Concerned Citizens for Responsible Leadership, Inc., the Friends of Senator David Karnes and the Nebraska Republican Party Committee, has been denominated MUR 2748. For the reasons set forth below, the Commission should find no reason to believe that

the Friends of Senator David Karnes violated the Federal Election Campaign Act ("Act") or the Commission's Regulations.

This Complaint, made in the closing days of the 1988 general election campaign, rests solely on the unsubstantiated assumption that the state of marriage automatically voids an independent expenditure and instead makes the expenditure a contribution to a campaign employing one of the partners in the marriage.

FACTS: Terri Evans served as campaign manager for the Friends of Senator David Karnes. John Evans, her husband, is an attorney with the Lincoln, Nebraska law firm of McHenry & Flowers. As part of his law practice, he was approached by an old friend and political colleague (Jack Hart) to assist in lawfully establishing an independent expenditure committee. Affidavit of John Evans at 1 (hereinafter Exhibit A).

Mr. Evans did incorporate Concerned Citizens for Responsible Government, Inc., and obtained the information and filing forms required by the Commission for a federal independent expenditure committee. Id. This legal work, for which Mr. Evans billed Concerned Citizens, was Mr. Evans' only involvement with Concerned Citizens. Exhibit A at 1, 2. Mr. Evans did not arrange for, coordinate or direct any activities by Concerned Citizens. Id. Mr. Evans never attended a meeting at which Concerned Citizens planned or conducted its activities. Id. Indeed, aware of the requirements of federal election law regarding independent expenditures, John Evans never discussed his work for Concerned Citizens with his wife. Id. at 3. His work for Concerned Citizens never included discussions about

Concerned Citizens' activities or plans concerning the 1988 Nebraska Senate race, so he did not at any time discuss Concerned Citizens' activities or plans with his wife. Id. at 4. Nor did he transmit information about the Karnes campaign or its plans, projects or needs to Concerned Citizens. Id.

Terri Evans, in her role as campaign manager for Senator Karnes, was responsible for running his bid for the United States Senate. Affidavit of Terri Evans at 1 (hereinafter Exhibit B). Terri Evans at no time held any position in Concerned Citizens and played no role in its planning or activities. Id. at 6. She and John Evans never discussed the activities or plans of any independent expenditure organization. Id. at 3. Terri Evans never transmitted information on Senator Karnes' plans, projects or needs to anyone (including John Evans) with a view toward having an independent expenditure made. Id. at 5. She did not in any way cooperate with or give prior consent to any activities or plans of Concerned Citizens, and did not even know of Concerned Citizens' activities until she learned of them from the news media. Id. at 6.

LEGAL DISCUSSION: The Act defines an independent expenditure as one advocating the election or defeat of a clearly identified candidate "which is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate of any agent or authorized committee of such candidate." 2 U.S.C. 431(17); 11 C.F.R. 109.1.

In this case, Concerned Citizens did conduct an independent expenditure campaign against the election of Bob Kerrey to the

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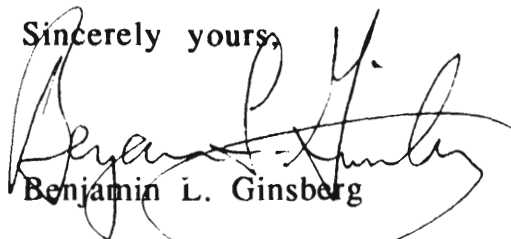
The Commission has already dealt with this situation in Advisory Opinion 1979-80, 1 Fed. Election Camp. Fin. Guide (CCH) para. 5469 (1980). An analysis of this precedent shows that the charges filed by Senator Karnes' opponent should be dismissed. That opinion raised the question of whether an independent expenditure group could hire the spouse of an employee of the candidate who would benefit from the independent expenditure. The Commission stated: "Mrs. A would not be an 'agent' merely due to her marriage to Mr. A. If, however, Mrs. A participates or assists in Mr. A's political consultant services or has a business relationship with Mr. A concerning his political services, [the independent expenditure group] is under the same constraints in hiring her as it is in hiring" an employee of the candidate. *Id.* at 10,528.

Under the facts of this case, Mrs. Evans has never participated in or assisted in Mr. Evans' law practice; she has no business relationship with him. Exhibit A at 5; Exhibit B at 7. Mr. Evans did

not discuss his work for Concerned Citizens with his wife. Exhibit A at 3; Exhibit B at 4. He never received any money from the campaign and never attended state planning or strategy meetings of the campaign. Id. at 6. He never provided any information about the Karnes campaign to Concerned Citizens. Id. Similarly, neither Terri Evans or the Friends of Senator David Karnes participated in or assisted in the independent expenditure at issue here. Exhibit B at 5, 6.

CONCLUSION: For the above stated reasons, the Commission should find no reason to believe that the Friends of Senator David Karnes and Jon D. Hoffmaster, as Treasurer, violated the Federal Election Campaign Act of 1971, as amended, or the Regulations issued pursuant thereto.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Benjamin L. Ginsberg", written over a circular stamp or seal.

Counsel to the Friends of
Senator David Karnes

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BEFORE THE FEDERAL ELECTION COMMISSION

CITY OF LINCOLN)
) ss.
STATE OF NEBRASKA)

MUR 2748

AFFIDAVIT OF JOHN EVANS

JOHN EVANS, being first duly sworn, deposes and says:

1. I am an attorney with the law firm of McHenry & Flowers in Lincoln, Nebraska. In the course of performing my duties at the law firm, an old friend and political colleague (Jack Hart) asked me to prepare incorporation papers and obtain information on federal election law requirements for an organization called Concerned Citizens for Responsible Government. As someone who has been active in Nebraska election matters since 1972, I did this work for Concerned Citizens and billed them for such.

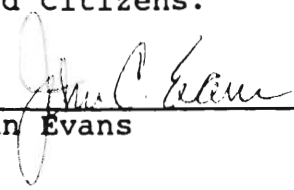
2. This legal work was my only association with Concerned Citizens. I have never attended a meeting of the group at which it planned or conducted its activities. I have never discussed any strategy with anyone associated with Concerned Citizens. I at no time or in any way arranged for, coordinated or directed any activities by Concerned Citizens, other than the necessary legal filings.

3. As an attorney familiar with federal election law, I never discussed my work for Concerned Citizens with my wife, Terri Evans, who was campaign manager for the Friends of Senator David Karnes. My work for Concerned Citizens did not include discussions about its activities or plans.

4. At no time did I transmit any information about the Karnes campaign, including its activities, plans, projects or needs to Concerned Citizens or any of its agents.

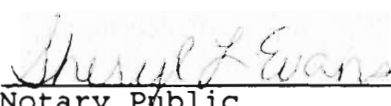
5. My wife, Terri Evans, in no way participates in or assists me with my law practice. She does not have any business relationship with me.

6. I have never received any money from the Karnes campaign. I have never attended a state planning or strategy meeting of the Friends of Senator David Karnes. I never provided any information about the Karnes campaign to Concerned Citizens.

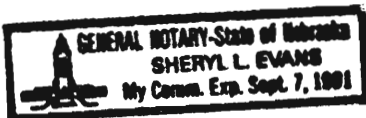


John Evans

Signed and sworn to before me
this 24 day of December, 1988



Notary Public



BEFORE THE FEDERAL ELECTION COMMISSION

CITY OF LINCOLN)
) ss.
STATE OF NEBRASKA)

MUR 2748

AFFIDAVIT OF TERRI EVANS

TERRI EVANS, being first duly sworn, deposes and says:

1. I am Terri Evans, campaign manager for the Friends of Senator David Karnes, a candidate for the United States Senate from Nebraska in 1988. As campaign manager for the Friends of Senator David Karnes I was responsible for the operation and planning of that campaign.

2. During the latter part of that campaign, Senator Karnes' opponent filed a complaint with the Federal Election Commission that is the subject of this Affidavit. It centers on the assumption that an expenditure undertaken by a third party could not have been independent because my husband, John Evans, incorporated the committee that made the expenditure.

3. My husband and I never discussed Concerned Citizen's independent expenditure activity or plans benefiting the Karnes campaign. News reports appearing in Nebraska discussing activities undertaken by Concerned Citizens for Responsible Government were my only source of information of the activities of that group.

4. I never discussed with my husband his role as incorporator for Concerned Citizens.

5. During the course of the campaign I never transmitted

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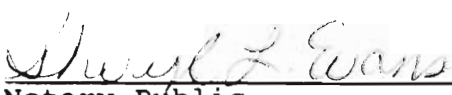
information on Senator Karnes' plans, projects or needs to anyone, including my husband, with a view toward having an independent expenditure made.

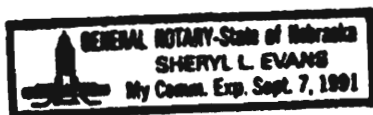
6. I did not in any way cooperate with or give prior consent to any activities or plans of Concerned Citizens. I did not even know of Concerned Citizens' activities until learning about them from the news media. I held no position in Concerned Citizens and played no role in its planning or activities.

7. I do not participate in or assist in my husband's law practice. I have no business relationship with him.


Terri Evans

Signed and sworn to before me
this 7th day of December, 1988


Notary Public



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Richard A. Peterson
Richard P. Nelson
Michael O. Johanns
William J. Morris
Lavern R. Holdeman
Jim R. Titus

**PETERSON NELSON JOHANNS
MORRIS & HOLDEMAN
ATTORNEYS AT LAW**

James B. Fleming
Rick L. Williams
Abbie J. Widger

December 15, 1988

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

ATTENTION: Patty Reilly

Re: MUR 2748
Nebraska Republican Federal Campaign Committee
and Dale E. LaBaron, Treasurer

Dear Ms. Reilly:

We have the December 1, 1988, letter of the General Counsel's Office granting an extension until December 17, 1988, for the Nebraska Republican Federal Campaign Committee and Dale E. LeBaron, as Treasurer, to file this response to the Complaint in MUR 2748. We appreciate your granting the extension.

There are three reasons why the Commission should not find reason to believe that the Nebraska Republican Federal Campaign Committee committed any violation of the federal election law. First, the facts presented do not support a reason to believe that the Nebraska party participated in an improper activity. Second, the facts presented do not support a reason to believe that the Nebraska party committee was an authorized agent for the candidate. Third, the facts presented do not support a reason to believe that the Concerned Citizens group "expressly advocated" the defeat of the Democratic candidate, within the meaning of the federal law defining independent expenditures.

The complainant has presented only one, solitary "fact" which supports his effort to involve the Nebraska Republican Federal Campaign Committee in this complaint. That "fact" is the use by Norm Riffel, the Republican State Chairman, on one

Mr. Lawrence M. Noble
December 15, 1988
Page Two

occasion, in a press conference, of the word "we". Enclosed for your consideration is Mr. Riffel's affidavit in which he denies any prior involvement with the Concerned Citizens group which would compromise its independence under federal statute or regulations.

Mr. Riffel states in his affidavit that the use of the pronoun "we" was simply a misstatement. Mr. Riffel immediately corrected himself. Although the press had been writing about the Concerned Citizens' first publication for at least four days, Mr. Riffel had not even seen a copy of it. He was not aware of the plans of any organization such as the Concerned Citizens group to form a committee and publish the type of information which the Concerned Citizens group did. He did not know about the existence of the committee until after it had been organized and he did not know about the contents of the publication until after it had been issued. Mr. Riffel explicitly denies any knowledge that the expenditures by the Concerned Citizens group were the result of any "arrangement, coordination or direction" by himself or anyone authorized by him as State Chairman. See 11 CFR Section 109.1(B)(4)(i). He also denies any knowledge that the activities of the Concerned Citizens group were based upon "information about the candidate's plans, projects, or needs provided to the expending person . . . with a view toward having an expenditure made." See 11 CFR 109.1(B)(4)(i)(a).

The complainant's attempt to implicate the state party through the use one word out of all the words spoken during this senate campaign, is clearly an attempt to make something out of nothing. The complainant claims that Mr. Riffel "sought in vain to correct himself," Complaint, p. 3. That characterization goes much further than the TV reporter did in his story. (See attachment to Complaint.) The reporter stated: "Riffel used the word we, and then corrected himself. Listen."

We all need to "listen" to Mr. Riffel's words, in context. First, earlier in the press conference, he denied any association with the activities of the Concerned Citizens organization. Second, his words as reported in the complaint were: "as long as we present the facts, as I understand this . . . as I say we, not myself, because I don't know . . . I haven't even seen this copy of the information. . . ." (Emphasis added.)

A single, two-letter word is an incredibly slender thread upon which the complainant thinks the Commission should find reason to believe that a violation has occurred.

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Mr. Lawrence M. Noble
December 15, 1988
Page Three

The second point deals with the question whether the Nebraska Republican Federal Campaign Committee is an agent for the candidate within the meaning of Section 109.1(b)(5). The complainant presents no facts to support its conclusion of agency relationship and relies upon the mistaken notion that the state party federal campaign committee is an agent of the candidate by operation of law: "By law, the party operates on [sic] an agent of an senate candidate . . ." Complaint, p. 3.

The authority which the state party does have, by operation of law, is the authority granted by 2 U.S.C. Section 441a(d). This is a grant of authority from the Congress to make expenditures in connection with the general election campaign of candidates for federal office. It is not a grant of authority from the candidate to serve as his agent. 11 CFR 109.1(b)(5) requires "actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate . . ." This regulation clearly contemplates that the authority will emanate from the candidate. This reading of the regulation is supported by the Commission's position in AO 1979-80. In its answer to Situation 8, the committee recognized that the existence of an agency relationship was a matter of fact which depended on the party committee's relationship with the candidate.

The complainant has presented no evidence to form a basis for the commission to have a reason to believe that an agency relationship existed between the candidate and the state party within the meaning of the applicable regulations.

There is one final issue to be considered. The issue is whether the publications by Concerned Citizens for Responsible Government, Inc., constitute express advocacy within the meaning of 2 U.S.C. Section 431(17) and 11 CFR 109.1(b)(2). It is clear what the attitude of Concerned Citizens is toward the Democratic candidate. It is "against" him. What is lacking in the publication, however, to constitute "expressly advocating" is a call for the reader to do anything about the information presented. Because of the First Amendment freedoms at issue, the statute and regulations applicable here must be constricted construed. Buckley v. Valeo, 424 US 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). The fact that the publication contains no exhortation to the readers to do anything takes this case beyond the decided cases involving express advocacy. See Federal Election Commission v. Massachusetts Citizens for Life, 479 US 107 S.Ct. 616 93 L.Ed.2d 539 (1986):

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Mr. Lawrence M. Noble
December 15, 1988
Page Four

Buckley adopted the 'express advocacy' requirement to distinguish discussion of issues and candidates from more pointed exhortations to vote for particular persons. We, therefore, concluded in that case that a finding of 'express advocacy' depended upon the use of language such as 'vote for,' 'elect,' 'support,' etc. Buckley, supra, at 44, n. 52, 96 S.Ct., at 646, note 52. Just such an exhortation appears in the 'Special Edition.' The publication not only urges voters to vote for 'pro-life' candidates, but also identifies and provides photographs of specific candidates fitting that description. The Edition cannot be regarded as a mere discussion of public issues that by their nature raise the names of certain politicians. Rather, it provides in effect, an explicit directive: vote for these (named) candidates." (Emphasis added.)

107 S.Ct. at 623, 93 L.Ed.2d at 551. Federal Election Commission v. Furgatch, 807 F.2d 857 (9th Cir. 1987), in which the court noted that the question of whether the words "don't let him do it" constituted express advocacy was a "very close call" (Id. at 861), determined that one of the main components of express advocacy is a "clear plea for action." Id. at 864. In the present case, there is no clear plea for action. See also Federal Election Commission v. Central Long Island Tax Reform Immediately Committee, 616 F2d 45 (2nd Cir. 1980).

For each of the reasons expressed, the Nebraska Republican Federal Campaign Committee and its Treasurer, Mr. LeBaron, submit that there is no reason to believe a violation involving this Committee has occurred.

Very truly yours,



Richard P. Nelson
Counsel for Nebraska
Republican Federal Campaign
Committee and Dale E. LeBaron

RPN:df

Enclosure

22040735172

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF)

MUR. NO. 2748

NEBRASKA REPUBLICAN FEDERAL)
CAMPAIGN COMMITTEE and)
DALE E. LEBARON, TREASURER)

AFFIDAVIT OF NORM RIFFEL

STATE OF NEBRASKA)

COUNTY OF SARPY)

ss.

COMES NOW, Norm Riffel, who being duly sworn deposes and says:

I am Norm Riffel. Since February, 1986, I have served as Chairman of the Republican Party of the State of Nebraska.

I held a press conference the morning of October 11, 1988. This was four days after the newspaper stories, which were attached to the complaint in this matter, were published in the Omaha World Herald and the Lincoln Star. By the time of the October 11 press conference, there was general knowledge that an organization, in which Jack Hart was Executive Director, had released a publication containing information about the Democratic candidate's conduct and associations when he was Governor of the State of Nebraska and that the basis for this publication was earlier newspaper stories and legislative committee reports. I had not even seen a copy of the first publication, which is dated October 1, 1988, at the time of the press conference.

During the press conference, I did use the word "we" as reported in the attachment to the complaint. The use of the word "we" was simply a misstatement and I immediately corrected myself. I tried to make it clear during that press conference, both before and after I mistakenly used the word "we", that the Nebraska Republican Party was not associated with that organization.

I was not aware that Jack Hart was planning to incorporate any organization such as Concerned Citizens for Responsible Government, Inc., until after it was done and reported in the public press. I was not aware of the content of the October 1, 1988, publication that Concerned Citizens issued, until the first issue was released. I did not even see a copy of the first issue until after the October 11, 1988, press conference. I was not aware of the content of the October 15, 1988, issue until it was released.

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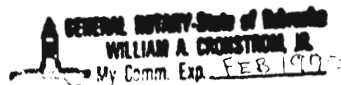
I did not know who Jack Hart was when the Concerned Citizens group was formed and do not recall ever having met him before then. I do not know either Jim Hines or John Graf, who the newspapers reported were also incorporators of Concerned Citizens and do not recall having ever met them. I did not communicate with Jack Hart or anyone else I know to be connected with the Concerned Citizens group regarding any arrangement, coordination or direction by the Republican candidate, or his committee, or the Nebraska Republican Party, before the publication of the Concerned Citizens group's publications dated October 1 or October 15, 1988, and I did not authorize anyone else to do so.

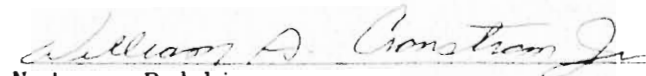
I did not communicate to Jack Hart or anyone else who I know to be connected with the Concerned Citizens group information about the candidate's plans, projects or needs with a view toward having an expenditure made and I did not authorize anyone else to do so.

Further affiant sayeth not.


Norm Riffel

SUBSCRIBED and sworn to before me this 15 day of December, 1988.




Notary Public

39040735174

06C 1582

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

89 JAN 17 PM 1:25

Jim Hines, Treasurer
Concerned Citizens for Responsible Government
Home Address 520 North 81st
Lincoln, Nebraska 68505

January 7, 1989

Federal Election Commission
999 E Street, NW
Washington, DC 20463

RE: Complaint MUR 2748

Dear Commission Representative:

Please find attached an affidavit from Mr. Jack Hart regarding the sequence of events leading up to the formation of Concerned Citizens for Responsible Government Inc. I hope this additional information will allow the FEC to expeditiously deal with this matter.

Please be advised that we no longer occupy the offices at 445 North 66. You may contact me at my home address above or Mr. Hart at his home/office address which is 440 Lyncrest Drive, Lincoln, Nebraska 68510

Our telephone numbers are:

Jim Hines Home	402-464-5717
Office	402-472-3131
Jack Hart	402-488-6504

Sincerely yours,

Jim Hines, Treasurer
Concerned Citizens for Responsible Government

89 JAN 17 PM 3:35

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Complaint Before FEC
The Federal Election Commission

MUR No. 2748

Lincoln)
) ss
Nebraska)

Affidavit of Jack Hart

Jack Hart, being duly sworn, deposes and says:

I have spent nearly 40 years in various forms of communications services, research and journalism, to wit: 30 years on the staff of the Lincoln Journal, Nebraska's second largest daily paper, in several capacities including political writer, state government reporter, editorial page editor and managing editor; two years as special assistant to the Governor of Nebraska; the past six years, since 1983, in my own firm, InCom/Information Communication, doing communications work for clients: public relations, media relations, writing and producing publications, association management and lobbying in the State Legislature. In short, my life's work has been in gathering and disseminating information.

In the spring of 1988, I was invited to meet with several politically active individuals, with whom I had worked on some projects not related to partisan politics. They were intent on keeping former Governor Robert Kerrey from being elected to the U. S. Senate. They cited Kerrey's ineffective term as Governor, his unsavory lifestyle and, most disconcerting to them, his business wheeling and dealing and total disregard for conflicts of interest while serving as governor.

As governor, Kerrey had failed miserably in dealing with the collapse of two major financial institutions in Lincoln. One of them was headed by Kerrey's closest political and business adviser who arranged a partnership, including then Governor Kerrey, that drained some two million dollars from depositors of one of the institutions, thus contributing materially to its demise. The story of Kerrey's role in these transactions had never been fully revealed by Nebraska's press and was being totally ignored by the press in the campaign--even though the entire story was uncovered by a legislative investigation and was all a matter of record. It was that record the group asked me to communicate to the people of Nebraska.

The individuals who contacted me remained uninvolved during the primary race for the Republican nomination for the Senate, in order to be able to work as vigorously as possible for the defeat of Kerrey by either of two Republicans running for the office. Their hope was that the Nebraska Republican Party would take up the difficult and unpleasant task of advising the voters of the defects in Kerrey, the Democrat candidate.

When it became apparent during the late summer that the Party had no intention of engaging in that aspect of the campaign, the group again contacted me to ask that we undertake this assignment as a citizen's group, unconnected to any candidate or political party. I agreed to do so for a fee and the group worked out a budget of \$20,000 which they felt was adequate for operational expenses and my research and writing of one or more reports on why they did not feel Kerrey was suited to be U. S. Senator from Nebraska.

I began research on the assignment in early August and the client group began contacting others--Republicans, Democrats, Independents--over the state to join in the effort. They also set about to raise the necessary funds for the project. None of the individuals involved, including myself, had ever participated in the organization of a political action group; so we immediately set out to secure legal advice in filing incorporation papers, setting up our legal identity and handling other organizational details.

Various members of the group contacted three or four attorneys of their acquaintance, but found each to be either already engaged in political activity that

could present a conflict of interest, or so unfamiliar with the political action process that they did not want to undertake this assignment. The difficulty in enlisting counsel delayed our ability to start collecting funds and generally frustrated the whole operation.

Finally, in desperation, I turned for advice to a long-time attorney friend, Roland Luedtke, who had served as state senator, lieutenant governor and mayor of Lincoln and was now in private law practice with a Lincoln firm. I had been assistant to the governor when he was lieutenant governor and I lobbied for the City of Lincoln when he was mayor. Moreover, he had handled some of my own personal legal work when we lived across the street from each other. So it was natural for me to turn to him for help even though I did not expect that he would have time to handle the rather routine work we needed to have done.

Luedtke suggested a young lawyer in the firm, John Evans. Evans had worked closely with Luedtke in state government and as assistant to him as mayor. I worked a good deal with Evans as lobbyist for the City. So that was a very logical connection and I contacted Evans about it. He quickly perceived that our status best fit the federal election laws' definition of a "non-connected political action committee," which could not be established by or administered by a candidate organization or a political party. Since those were exactly the criteria we had adopted for our group, that obviously was the answer to our quandary. The group formally adopted the name "Concerned Citizens for Responsible Government," engaged me as executive director and proceeded, with Evans' help, to incorporate and file the necessary papers with the FEC. That was the full extent of Evans' association with CCRG.

Evans mentioned at the outset that his wife was a paid member of the staff of Sen. David Karnes, the Republican candidate against whom Kerrey was running. He counseled with other members of the law firm and I with my group and no one felt this was any problem, inasmuch as Evans would be only performing the routine functions of incorporation and filing with the Federal Election Commission. He would not be a part of our group, he would not engage in strategy or have any voice in the content of material we were preparing or in its distribution.

And that was exactly the way he functioned with us. He never attended a meeting of CCRG, never served us in an ongoing capacity as legal counsel, never advised us on any matters of policy.

Yet the whole basis of the complaint filed by the chairman of the Kerrey for United States Senate Committee is that Evans' brief and routine legal work performed for our group violated the "independence" requirement pertaining to a non-connected political action committee. We find that contention to be totally wrong and utterly ludicrous.

Moreover, at no time prior to formation of our group or during our operation was there any consultation whatever between Senator Karnes or his campaign officials and myself or the leaders of Concerned Citizens. We knew that it was essential for political purposes that Karnes not be identified in any way with what might be construed as the "negative" campaigning we were doing. That was the arms-length posture we intended all along and that we observed meticulously throughout the campaign.

It is significant, I believe, that the entire response of Kerrey and his campaign committee to the information in our published reports (Exhibit A attached) was to attempt to discredit me and the Concerned Citizens group. Never did they refute any of the information we were presenting, even though the Nebraska press gave them a number of opportunities to do so. As you will note, the reports themselves are thoroughly referenced to official reports and statements.

Furthermore, the Kerrey organization went to extraordinary lengths to intimidate the press in order to persuade them not to disseminate our material. Bill Hoppner, chairman of the Kerrey for United States Senate Committee, even distributed letters to Nebraska radio stations warning them of dire legal consequences if they aired our

advertising and, by inference, our news releases (Exhibit B).

They also made every effort to cast aspersions on our organization, thus discouraging interested persons from supporting us financially. The chairman of the Kerrey for Senate Committee, Bill Hoppner, held a press conference, widely reported over Nebraska, to announce the filing of the complaint, which now is MUR No. 2748, with the Federal Election Commission. That news coverage actually preceded their filing of the complaint.

Their objective, of course, was to picture the Concerned Citizens group, as well as Senator Karnes and the Nebraska Republican Party, as lawbreakers, as perpetrating a "fraud" on the people of the state and as engaging in some kind of sinister collusion. No matter what the ultimate disposition of this complaint, they accomplished their purpose inasmuch as their loudly heralded announcement of the complaint resulted in a distinct lessening of support for and confidence in Concerned Citizens.

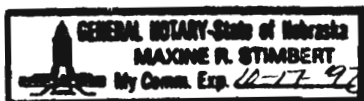
We believe it is evident that the filing of MUR 2748 was intended solely to create suspicion of wrongdoing by Concerned Citizens, without the Kerrey force ever having to prove it, and without ever having to answer to the people of Nebraska for the actions of Governor Kerrey as reported by Concerned Citizens.


Jack Hart

Subscribed and sworn to before me
this 9th day of ~~December~~, 1988.

JANUARY, 1989


Notary Public



23040735178

Exhibit A

Concerned Citizens

against

KERREY



A painstaking examination of former Gov. Robert Kerrey's fitness for higher political office—first in a series

This deals with his shocking role in the collapse of two Lincoln financial institutions.

- Governor Kerrey caused Commonwealth Savings Co. (Lincoln) to close when it did by informing the press that institution was under close scrutiny — at the very time his State Banking Director was in Washington trying to find ways to save it.

- Kerrey's closest personal, political and financial adviser, William F. Wright, an attorney, was a major owner of State Security Savings Co. (Lincoln), which was in as bad — or worse — shape as Commonwealth.

- Wright and his co-owners "milked and drained" State Security depositors' assets.

- The response of Kerrey and his colleagues after Commonwealth's demise was to create a huge furor with the public, press and government to find and punish the perpetrators, rather than convening a special Legislative Session or otherwise attempting to restore depositor losses "insured by the State of Nebraska".

- Kerrey himself became a partner in an intricate business deal in which State Security holding company engineered the opportunity to take over a choice commercial property at a bargain price which was much less than a Chicago offer. This maneuver involving Kerrey and his partners drained about two million dollars from the depositors' reserves.

- One facet of this transaction involving Kerrey and his partners so troubled investigating State Senators that they called on the State Banking Director to look into filing criminal charges.

- The Kerrey-appointed Banking Director went to Wright's law firm for an opinion on whether Commonwealth could take bankruptcy in order to help recoup depositor losses. The answer: No. A few months later, Wright and his firm were instrumental in taking State Security into bankruptcy with a dramatic filing. Wright was to rather hurriedly take up residence in California, his name disappeared from the law firm's letterhead.

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Concerned Citizens against **KERREY**

NEBRASKA AT ITS BEST

?

Or Conflict of Interest at its Worst

Falsified Application Filed For Kerrey's NIFA Loan

*Official document claims Kerrey had "blind" trust; he had nothing of the kind
Again the Nebraska public was bamboozled by Kerrey.*

Kerrey Says His Concern was to 'Eliminate Perception of Conflicts'

Not to Eliminate Conflicts of Interest

On Shoppers Fair Deal, Kerrey Personally Signed On; His Name Was on \$150,000.00 Loan to Pay Disputed Fee to State Security Owners

**As Governor, Kerrey Never Did File Report
of Potential Conflict of Interest in
his Business Deals**

Concerned Citizens For
Responsible Government, Inc.
Suite 6/445 North 64th
Lincoln, NE 68505

U.S. POSTAGE
PAID
BUSINESS PERMIT NO.
LINCOLN, NE 68501

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Bob Kerrey

FOR THE UNITED STATES SENATE

7002 Pacific • Omaha, Nebraska 68114

Telephone (402) 391-3411

Tuesday, October 11, 1988

Exhibit B

Dear General Manager,

It has come to my attention that groups claiming to be non-connected or independent political action committees may be attempting to purchase time on your station to broadcast advertisements misrepresenting Bob Kerrey's position on issues of national importance. These groups also intend to air material that amounts solely to personal attacks and unfounded innuendo. These misrepresentations so seriously distort Bob Kerrey's record and slander him personally, that I would ask that you consider carefully whether your station should acquiesce in this conduct by accepting this material for broadcast on your facility.

Your station is not obliged to accept these advertisements for broadcast, nor is it required to account in any way for its decision to reject them. Columbia Broadcasting System v. Democratic National Committee, 412 U.S. 94 (1973); You Can't Afford Dodd Committee, 81 F.C.C. 2d 579 (1980). The repeated efforts of groups like these to obtain just such a private right of access have been consistently rejected by the Federal Communications Commission ("FCC"). National Conservative Political Action Committee, 89 F.C.C. 2d 626 (1982). There are numerous valid reasons for refusing to broadcast the ads.

Liability for Libelous Broadcasts by Independent Committees

Under S 315(a) of the Federal Communications Act, broadcast stations are expressly prohibited from censoring in any way material submitted by a candidate for broadcast. Since the stations may not censor or otherwise exercise editorial control over such materials, they are not legally liable in any libel actions arising out of representations made by a candidate in their broadcasts. Farmers Educational and Cooperative Union v. WDAY, Inc., 360 U.S. 525 (1959).

This immunity does not, however, apply to representations made in political broadcasts by non-candidates, such as "independent" committees. Broadcast stations are fully liable for libelous attacks made by such committees upon U.S. candidates in their political broadcasts. In Re Complaint of Senator Thomas F. Eagleton, 81 F.C.C. 2d 423 (1980); Felix v. Westinghouse Radio Stations, 186 F.2d 1 (3rd Cir. 1950), cert. denied, 341 U.S. 909 (1951).

Here, again, the FEC's Broadcast Bureau has had occasion to affirm this point in response to objections from independent committees, namely, that:

With the exception of statements made during "uses" by legally qualified candidates for public office, which cannot be censored, a broadcaster may be subject to defamation proceedings under the jurisdiction of the appropriate local courts. Therefore, it is left to each station or network to make its own determinations of whether material contemplated for broadcast may contain statements which may subject it to potential liability.

Letter to J. Curtis Herge, attorney for NCPAC, from Broadcast Bureau Staff, dated November 20, 1981, p. 4.

Personal Attack

Stations must also afford a free opportunity to respond to candidates who are victims of a "personal attack" by persons other than legally qualified candidates, their authorized spokesmen, or those associated with their campaign, 47 C.F.R. SS 73.1920(a), (b)(3), provided that the personal attack does not occur during bona fide newscasts or news interviews, or during on-the-spot coverage of bona fide news events. 47 C.F.R. S 73.1920(b)(4). In order for the personal attack rule to come into play, the attack must occur during "the presentation of views on a controversial issue of public importance." 47 C.F.R. S 73.1920(a).

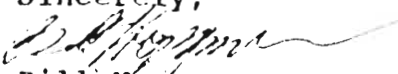
A "personal attack" is an attack made upon the "honesty, character, integrity or like personal qualities of" the candidate.

Under the FCC regulations, a station has an affirmative obligation in the event of a "personal attack": Within one week it must notify the person or group attacked of the date and time and identification of the broadcast, send a script or tape of the attack (or if a script or tape is not available, as accurate a summary as possible) to the victim of the attack, and afford the victim a reasonable opportunity to reply on the station's facility, without charge. 47 C.F.R. SS 73.1920(a)(1)-(3).

In the event that the station does not comply with this affirmative duty to notify a candidate of an attack, and to afford that candidate a reasonable opportunity to respond without charge, the target of the attack is entitled to bring a complaint before the FCC and to seek remedial administrative action by the agency.

Thank you for your consideration of this matter.

Sincerely,


Bill Hoppner
Chairman, Kerrey for U.S. Senate

BEFORE THE FEDERAL ELECTION COMMISSION
89 FEB 22 PM 3:20

In the Matter of)
)
Concerned Citizens for Responsible)
Government, Inc., and Jim Hines,)
as treasurer)
Friends of Dave Karnes and)
Jon Hoffmaster, as treasurer)
Nebraska Republican Federal Campaign)
Committee and Dale E. LeBaron,)
as treasurer)

MUR 2748

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

The Office of the General Counsel received a complaint on October 27, 1988, against Concerned Citizens for Responsible Government, Inc., and Jim Hines, as treasurer, ("Concerned Citizens")^{1/}; Friends of Dave Karnes and Jon Hoffmaster, as treasurer ("Karnes Committee"); and the Nebraska Republican Federal Campaign Committee and Dale E. LeBaron, as treasurer ("the State Party"). The complaint alleges that purported independent expenditures made by Concerned Citizens were made in coordination and in consultation with the Karnes Committee and the State Party.^{2/}

Pursuant to the Commission's expedited procedures, respondents were notified of the complaint by special delivery letters dated October 28, 1988. Additionally, on October 31, 1988, the Office of the General Counsel circulated an expedited report to the Commission stating that because the complaint

^{1/} The complaint incorrectly identified this entity as Concerned Citizens for Responsible Leadership, Inc.

^{2/} Concerned Citizens registered with the Commission on October 3, 1988, as an unauthorized committee supporting/opposing Bob Kerry, then a candidate for U.S. Senate. Concerned Citizen's Post-General Election report indicates it spent a total of \$15,881.

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raised issues of fact, respondents would be afforded the statutorily mandated fifteen day response period. After requesting and receiving extensions of time to respond to the complaint, on December 20, 1988, the last response was submitted.^{3/} As discussed below, based upon these responses, the Office of the General Counsel recommends that there is no reason to believe respondents violated the Act.

II. FACTUAL AND LEGAL ANALYSIS

A. The Facts

The complaint presents two pieces of information said to support the allegation of coordination and consultation between the Karnes Committee and Concerned Citizens. First, as evidence of possible ties between the two committees, the complaint notes that the attorney who incorporated Concerned Citizens, John Evans, is married to Terri Evans, campaign manager of the Karnes Committee.

Second, coordination and consultation is said to have occurred between Concerned Citizens and the State Party. Supporting this allegation is a television news quote from the State Party's chairman who allegedly stated regarding Concerned Citizens' activities, "As long as we present the facts" Complaint at 3 (emphasis in complaint). The complaint notes the chairman then corrected his statement to say "I say, we, not myself, because I don't know." Id. This statement was said to

^{3/} The Karnes Committee requested and received a thirty day extension of time to respond until December 14, 1988. The State Party also received a thirty day extension of time until December 17, 1988. An additional response was received from Jack Hart on January 17, 1989. Mr. Hart served as a paid consultant to Concerned Citizens through his organization, Information Communication.

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have been reported in the press as evidence of a relationship between the State Party and Concerned Citizens.

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All of the respondents deny that any communications occurred between the three committees. Jim Hines, Concerned Citizens' treasurer, states that he was contacted by Jack Hart, a founder of Concerned Citizens, and requested to serve as treasurer. Mr. Hines states that at a subsequent organizational meeting it was determined to seek legal advice regarding incorporation. Mr. Hart and Mr. Hines then contacted Mr. Evans, an attorney associated with a law firm of a friend and political associate of Mr. Hart. According to Mr. Hart's response, Mr. Evans disclosed to him that his spouse, Terri Evans, was a paid member of the Karnes Committee. Hart Response at 3. Mr. Evans and Mr. Hart decided that this relationship would not preclude Mr. Evans from working for Concerned Citizens. Mr. Hart reached this conclusion because Mr. Evans "would not be a part of our group, he would not engage in strategy or have any voice in the content of material we were preparing or in its distribution." Id. Mr. Evans thus incorporated Concerned Citizens and provided advice regarding the Act.^{4/} Concerned Citizen's treasurer and Mr. Hart both state that this was Mr. Evans' only contact with Concerned Citizens, and that Mr. Evans stated that he had not discussed the activities of Concerned Citizens with his spouse.

The State Party also denies that it coordinated or consulted

^{4/} Concerned Citizens' reports on file with the Commission to date do not reveal any itemized disbursements for these legal services. The responses include a sworn affidavit from Mr. Evans stating that he billed Concerned Citizens for his services.

with Concerned Citizens. Its response includes an affidavit by Mr. Norm Riffel, the State Party official alleged to have collectively referred to the State Party and Concerned Citizens as "we". Mr. Riffel admits using the word "we", but avers that this "was simply a misstatement and I immediately corrected myself. I tried to make it clear during the press conference, both before and after I mistakenly used the word 'we', that the Nebraska Republican Party was not associated with that organization." State Party Response at 5. Mr. Riffel asserts he was unaware of the existence or activities of Concerned Citizens until press reports appeared, id., and specifically denies communicating with anyone known to be connected with Concerned Citizens "regarding any arrangement, coordination, or direction by the Republican candidate, or his committee, or the Nebraska Republican Party" before the publication of Concerned Citizens' publications. Id. at 6. Further, Mr. Riffel avers that he did not communicate with anyone he knew to be associated with Concerned Citizens regarding "the candidate's plans, projects or needs with a view towards having an expenditure made and I did not authorize anyone else to do so." Id.^{5/} In fact, he denies even being acquainted with the persons forming Concerned Citizens. Id.

^{5/} The State Party further denies that it served as an agent of the Karnes Committee and asserts that the publications of Concerned Citizens do not constitute express advocacy. As discussed at Section C, because the lack of communications between the State Party, the Karnes Committee, and Concerned Citizens leads this Office to recommend that there is no reason to believe respondents violated the Act, we do not address the latter two points raised in the State Party's response.

Finally, the Karnes Committee admits that Ms. Evans is married to Mr. Evans and that Mr. Evans incorporated Concerned Citizens. The Karnes Committee has provided a sworn affidavit from Mr. Evans that states that he did not transmit any information about the Karnes Committee, including its activities, plans, projects or needs to Concerned Citizens or any of its agents. Karnes Committee Response at 7. Additionally, this response includes a sworn affidavit from Ms. Evans stating that she did not discuss Concerned Citizens' independent expenditure campaign, did not transmit any information "on Senator Karnes' plans, projects or needs to anyone, including my husband, with a view towards having an independent expenditure made," and in fact first learned of Concerned Citizens' activities from the news media. Id. at 9.

B. The Law

The Act defines an independent expenditure as "an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate."

2 U.S.C. § 431(17). See 11 C.F.R. § 109.1. The Act places no limitations on the amounts of these expenditures; however, for an expenditure to be independent all elements of this definition must be satisfied. If these elements are not satisfied, the purported independent expenditures are viewed as in-kind

contributions subject to the limitations of 2 U.S.C. § 441a(a). Thus, a committee failing to meet the requirements for independent expenditures would be in possible violation of either 2 U.S.C. §§ 441a(a)(1)(A) or 441a(a)(2)(A), and the candidate committee would possibly violate 2 U.S.C. § 441a(f).

The Commission's Regulations at 11 C.F.R. § 109.1(b)(4)(i)(A) and (B) define "Made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or an agent or authorized committee of the candidate" to mean -

(i) Any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. An expenditure will be presumed to be so made when it is -

(A) Based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made;

(B) Made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent.

The term "agent" is defined in 11 C.F.R. § 109.1(b)(5) as

any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate, or means any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures.

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In Advisory Opinion 1979-80, the Commission addressed the ability of a committee to make independent expenditures where the entity making independent expenditures hires a consultant also working for an individual who then becomes a candidate. The Commission concluded that the entity making the independent expenditures would then be precluded by the presumption in the Commission's Regulations from making independent expenditures regarding that election. The Commission further concluded that if the consultant's spouse sought to work for the entity making independent expenditures, "she would not be an 'agent' merely due to her marriage." If, however, she were to participate or assist in her spouse's political consulting services or to have a business relationship with her spouse concerning his political services, the committee would face the same constraints noted above. See A.O. 1979-80, 1 Fed. Election Camp. Fin. Guide [CCH] ¶ 5469, at p. 10,528. The independence of expenditures can also be compromised by communications between candidate committees and independent expenditure committees through state party committees. Id. at p. 10,531.

C. Application of the Law to the Facts

In the instant case the sworn responses uniformly state that Concerned Citizens did not communicate with either the Karnes

Committee or the State Party. Moreover, there is no evidence that Ms. Evans, on the basis of her marriage, business, or other relationships, had any communications with her spouse regarding the Karnes Committee. Significantly, Mr. Evans assertedly was approached only for legal advice, and his only contact with Concerned Citizens appears to have been legal work related to its formation. Additionally, the Karnes Committee and Concerned Citizens do not share any common vendors. This absence of communications between the parties, coupled with their sworn statements that they did not communicate through agents, leads this Office to conclude that the Act's and Regulations' requirements for independent expenditures appear to have been satisfied. Therefore, this Office recommends that there is no reason to believe either Concerned Citizens and its treasurer violated 2 U.S.C. § 441a(a)(1)(A) or that the Karnes Committee and its treasurer violated 2 U.S.C. § 441a(f). Additionally, this Office recommends that there is no reason to believe the Nebraska Republican Federal Campaign Committee violated any section of the Act relating to this matter.

III. RECOMMENDATIONS

1. Find no reason to believe Concerned Citizens for Responsible Government and Jim Hines, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).
2. Find no reason to believe Friends of Dave Karnes and Jon Hoffmaster, as treasurer, violated 2 U.S.C. § 441a(f).

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3. Find no reason to believe the Nebraska Republican Federal Campaign Committee and Dale E. LaBaron, as treasurer, violated any statute within the Commission's jurisdiction regarding this matter.
4. Approve the attached letters.
5. Close the file in this matter.

Lawrence M. Noble
General Counsel

Date 2/21/89

By: 
Lois G. Lerner
Associate General Counsel

Attachments

1. Karnes Committee Response
2. State Party Response
3. Concerned Citizens Response
4. Hart Response 6/
5. Proposed Letters (4)

Staff Person: Patty Reilly

6/ Attachment A to this response includes the publications of Concerned Citizens that have been reduced in size for copying purposes.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Concerned Citizens for Responsible) MUR 2748
Government, Inc., and Jim Hines,)
as treasurer)
Friends of Dave Karnes and)
Jon Hoffmaster, as treasurer)
Nebraska Republican Federal Campaign)
Committee and Dale E. LeBaron,)
as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal
Election Commission, do hereby certify that on February 27,
1989, the Commission decided by a vote of 6-0 to take
the following actions in MUR 2748:

1. Find no reason to believe Concerned Citizens
for Responsible Government and Jim Hines, as
treasurer, violated 2 U.S.C. § 441a(a)(1)(A).
2. Find no reason to believe Friends of Dave Karnes
and Jon Hoffmaster, as treasurer, violated
2 U.S.C. § 441a(f).
3. Find no reason to believe the Nebraska Republican
Federal Campaign Committee and Dale E. LaBaron,
as treasurer, violated any statute within the
Commission's jurisdiction regarding this matter.
4. Approve the letters, as recommended in the
General Counsel's report signed February 21,
1989.

(Continued)

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5. Close the file in this matter.

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

Attest:

2/27/89

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

Received in the Office of Commission Secretary: Wed., 2-22-89, 3:20
Circulated on 48 hour tally basis: Thurs., 2-23-89, 11:00
Deadline for vote: Mon., 2-27-89, 11:00

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 3, 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Bill Hoppner, Chairman
Kerrey for Senate Committee
7602 Pacific
Omaha, Nebraska 68114

RE: MUR 2748

Dear Mr. Hoppner:

On February 27, 1989, the Federal Election Commission reviewed the allegations of your complaint dated October 27, 1988, and found that on the basis of your complaint and information provided by the respondents, there is no reason to believe Concerned Citizens for Responsible Government and Jim Hines, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A). Additionally, on that date the Commission determined that there is no reason to believe the Friends of Dave Karnes and Jon Hoffmaster, as treasurer, violated 2 U.S.C. § 441a(f). Moreover, the Commission further determined that there is no reason to believe the Nebraska Republican Federal Campaign Committee and Dale E. LaBaron, as treasurer, violated any statute within the Commission's jurisdiction regarding this matter.

Accordingly, on February 27, 1989, the Commission closed the file in this matter. The Federal Election Campaign Act of 1971, as amended ("the Act") allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Lawrence M. Noble
General Counsel

By: 
Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 3, 1989

Benjamin Ginsburg, Esquire
National Republican Senatorial Committee
440 First Street, N.W.
Washington, D.C. 20001

RE: MUR 2748
Friends of Dave Karnes and
Jon Hoffmaster, as treasurer

Dear Mr. Ginsburg:

On October 28, 1988, the Federal Election Commission notified your clients, the Friends of Dave Karnes and Jon Hoffmaster, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On February 27, 1989, the Commission found, on the basis of the complaint and information provided by your clients, that there is no reason to believe the Friends of Dave Karnes and Jon Hoffmaster, as treasurer, violated 2 U.S.C. § 441a(f). Accordingly, the Commission closed its file in this matter.

This matter will become a part of the public record within 30 days. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

Sincerely,

Lawrence M. Noble
General Counsel

A handwritten signature in dark ink, appearing to read "Lois G. Lerner", with a long horizontal flourish extending to the right.

By: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report



FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

March 3, 1989

Jim Hines, Treasurer
Concerned Citizens for Responsible
Government, Inc.
440 Lyncrest Drive
Lincoln, Nebraska 68505

RE: MUR 2748
Concerned Citizens for
Responsible Government, Inc.
and Jim Hines, as treasurer

Dear Mr. Hines:

On October 28, 1988, the Federal Election Commission notified Concerned Citizens for Responsible Government, Inc. ("Committee") and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On February 27, 1989, the Commission found, on the basis of the complaint and information provided by you, that there is no reason to believe the Committee and you, as treasurer, violated 2 U.S.C. §441a(a)(1)(A). Accordingly, the Commission closed its file in this matter.

This matter will become a part of the public record within 30 days. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

Sincerely,

Lawrence M. Noble
General Counsel

A handwritten signature in dark ink, appearing to read "Lois G. Lerner", is written over a horizontal line.

By: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 3, 1989

Richard P. Nelson, Esquire
Peterson, Nelson, Johannis,
Morris & Holdeman
1560 South 70th Street
P.O. Box 5526
Lincoln, Nebraska 68505-0526

RE: MUR 2748
Nebraska Republican Federal
Campaign Committee and
Dale E. LeBaron, as
treasurer

Dear Mr. Nelson:

On October 28, 1988, the Federal Election Commission notified your clients, the Nebraska Republican Federal Campaign Committee and Dale E. LeBaron, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On February 27, 1989, the Commission found, on the basis of the complaint and information provided by your clients, that there is no reason to believe the Nebraska Republican Federal Campaign Committee and Dale E. LeBaron, as treasurer, violated any statute within the Commission's jurisdiction regarding this matter. Accordingly, the Commission closed its file in this matter.

This matter will become a part of the public record within 30 days. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

Sincerely,

Lawrence M. Noble
General Counsel

A handwritten signature in dark ink, appearing to read "L. G. Lerner", is written over a horizontal line.

By: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2748

DATE FILMED 3/12/89 CAMERA NO. 3

CAMERAMAN AS

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