



FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20461

THIS IS THE BEGINNING OF MUR # 3524

DATE FILMED 9/28/93 CAMERA NO. 4

CAMERAMAN E.E.S.

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PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011 • (202) 628-6600

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

MAY 15 2 45 PM '92

May 15, 1992

MUR 3524

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RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

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

Dear Commissioners:

The Democratic Senatorial Campaign Committee files this complaint in order to initiate an immediate investigation of the spending practices of the Oregon Republican State Committee ("the Republican Committee"). The public record shows, and an investigation will confirm, that the Republican Committee has disregarded the legal expenditure limitations of the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"), 2 U.S.C. §§ 431 et seq., and the Regulations of the Federal Election Commission ("FEC"), 11 C.F.R. §§ 100.1 et seq., in its ongoing effort to secure the defeat of one of the Democratic primary Senate candidates, Congressman Les AuCoin.

Through both newspaper advertisements and broadcast media, at considerable cost, the Republican Committee has launched a wave of general public criticism designed to influence voters to cast their ballots against Congressman AuCoin. The Republican Committee does not intend, however, to do as the law requires: account for the money so spent under the appropriate FECA limitation, particularly 2 U.S.C. § 441a(d)(3), applicable to general election spending.

I. THE FACTS

The Senate race in Oregon involves a strong Democratic party challenge to a 24-year incumbent Republican Senator, Bob Packwood. The Democratic nomination is being sought by two candidates, Congressman Les AuCoin and Harry Lonsdale. The Republican Party -- both the national party and the state party -- is concerned that the race presents an excellent opportunity to turn a formerly Republican seat into a Democratic one. This concern is not misplaced -- recent polls in Oregon have indicated that Packwood would lose to either Democratic candidate in the general election. Such concern has in the past translated into extraordinary expenditures of funds by the Republican party in support of the Republican candidate in such races and in opposition to the Democratic candidate.

[04005-0001/DA921350.001]

These expenditures have already begun in Oregon. The Republican Committee has to date published newspaper articles and run television spots attacking Congressman AuCoin. In each of the advertisements, the Republican Committee criticizes Congressman AuCoin for overdrafts on his account at the House Bank. A copy of the text of the television ad is attached as Exhibit A.

The ads have been widely disseminated around the State of Oregon.

According to the Public Records Office of the FEC, to date no Pre-Primary Report has been filed with the Federal Election Commission by the Republican Committee that would allow one to determine whether coordinated expenditures under Section 441a(d) reflect the benefit derived from the advertising campaign by the eventual Republican nominee. That the expenditures are designed to benefit Senator Packwood has been clearly expressed by the Craig Berkman, Chairman of the Republican Committee. In a newspaper article, Mr. Berkman is quoted saying "We'd rather run against Lonsdale than AuCoin." Exhibit B. Further, the theme of the ads - overdrafts - ties directly in to what is identified by the Packwood campaign as "a top issue in his re-election campaign." Exhibit C.

As the discussion below will show, failure by the Republican Committee to account under lawful limits for these coordinated expenditures -- and to report them -- would constitute clear violations of the FECA which, if left uncorrected, would result in the Republican nominee receiving funding far in excess of the legal allowance.

II. THE LAW

Section 441a(d)(3) of the Federal Election Campaign Act operates as a limitation on the expenditures made by political party committees in connection with the general election campaigns of their nominees for the United States Senate. Among the political party committees entitled to these special spending privileges are the "state committees" of each political party. In the State of Oregon, for purposes of this Complaint and on all other relevant occasions, the "state committee" of the Republican Party in the State of Oregon is the Republican State Committee named as Respondent in this action.

The spending rights of political parties like the Republican Committee are well defined under the law. The Republican Committee may make direct or in-kind contributions to candidates, in amounts not exceeding \$5,000 per election. 2 U.S.C. § 441a(a)(2). It may make coordinated § 441a(d) expenditures on its nominee's behalf. Also, the Republican Committee could somewhat supplement the total dollars expended in connection with the Senate general election campaign, by making certain "exempt" expenditures in support of the general election nominee in accordance with the terms and conditions of the volunteer campaign materials, slate card and other relevant exemptions. See, e.g., 2 U.S.C. §§ 431(8)(B)(v), (x) & (xii); 2 U.S.C. §§ 431(9)(B)(iv), (viii) and (ix).

These are the only choices available to the Republican Committee in expending funds specifically to promote the election of its nominee or the defeat of the Democratic nominee for the United States Senate. It is significant that regulations of the Federal Election Commission specifically prohibit political parties from undertaking "independent" expenditures in support of their candidates in the general election. 11 C.F.R. §§ 110.7(a)(5) & (b)(4). See also A.O. 184-15 and A.O. 1980-119, 1 Fed. Election Camp. Fin. Guide (CCH) ¶¶ 5766, 5561. This prohibition serves to impose § 441a(a) or § 441a(d) limitations on any spending which might otherwise appear "independent" in nature but which cannot be so treated because the spending entity is a state party.

III. DISCUSSION

The Republican Committee is apparently attempting to steer clear of lawful limitations on any of its aggressive anti-AuCoin spending. The Republican Committee appears to assume a right to make independent expenditures, or at least quasi-independent expenditures, in opposition to the AuCoin candidacy. The advertisements financed by the Committee specifically identify Congressman AuCoin and the texts of these advertisements are organized entirely around derogatory claims about his record. Those same advertisements make it clear that their purpose is to influence voter perceptions about Congressman AuCoin's Senate candidacy. Public statements by Republican Committee officials about this anti-AuCoin campaign confirm that it has this purpose. It is equally obvious from the text of these advertisements that the perception that their authors hope to generate among Oregon voters would not be favorable to Congressman AuCoin.

The Commission has already addressed and resolved this issue in Advisory Opinions 1984-15 and 1985-14. 1 Fed. Election Camp. Fin. Guide (CCH) ¶¶ 5819, 5766. Both these opinions address the issue of spending by party committees in opposition to the other party's candidate(s) before their own nominee has been selected. In both cases, the FEC found that certain types of spending for this purpose was attributable to § 441a(d) limits. The spending subject to these rulings and held accountable to limits is identical in character to the Republican Committee's spending to defeat Congressman AuCoin in the general election.

1. Advisory Opinion 1984-85

Advisory Opinion 1984-15 involved advertisements proposed by the Republican National Committee in connection with the 1984 Presidential elections. The advertisements would have aired before and after the Democratic Party nominating convention, but before the selection of the Republican nominee (who was, of course, not in doubt). They would have featured a prominent candidate for the Democratic nomination and would have contained statements attacking the candidate's positions on issues and his record.

The FEC first held that the ads could be considered 441a(d) coordinated expenditures, since "nothing in the Act, its legislative history, Commission regulations or court decisions indicates that coordinated party expenditures must be restricted to the time period between nomination and the general election." The test propounded by the FEC to determine whether expenditures would, in fact, count toward 441a(d) limits was whether the expenditures were made "for-the purpose of influencing the outcome of the general election"

As the FEC made clear in this ruling, expenditures made with a genuine general election-influencing purpose count against § 441a(d) limits regardless of whether a nominee has been selected or even clearly identified. The FEC stated: "[W]hether a specific nominee has been chosen, or a candidate assured of nomination, at the time the expenditure is made, is

immaterial."¹ The Commission therefore concluded that the ads proposed by the Republicans required allocation to § 441a(d) limits since

[t]he clear import and purpose of these proposed advertisements is to diminish support for any Democratic Party . . . nominee and to garner support for whoever may be the eventual Republican Party nominee. These advertisements relate primarily, if not solely, to [a single federal office] and seek to influence a voter's choice between the Republican Party . . . candidate and any Democratic Party nominee in such a way as to favor the choice of the Republican candidate. The only election which will pose such a choice is the . . . general election. These advertisements effectively advocate the defeat of a clearly identified candidate in connection with that election and thus have the purpose of influencing the outcome of the general election.

(Citation omitted.) Because the expenditures were made to benefit the eventual nominee in the general election, they must be allocated to § 441a(d) limits.²

In holding that § 441a(d) limits applied, the FEC distinguished so-called "generic" party building advertisements. Such ads do not count toward limitations attributable to any particular candidate, but these ads may not identify "by visual or audio content . . . any specific candidate or office." The facts of this Complaint simply do not support any attempted argument by the Republican Committee that The Ads are in any way "generic."

¹ The FEC has frequently noted also that a party committee need not coordinate § 441a(d) expenditures with its own nominee for the Senate and thus can make such expenditures before its nominee is selected. See, e.g., A.O. 1975-120, 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5186.

²See also 11 C.F.R. § 106.1(a) (Expenditures on behalf of candidates must be attributed "in proportion to, and shall be reported to reflect, the benefit reasonably expected to be derived.")

The similarity of the facts of this complaint to those underlying the main holding of the Advisory Opinion is striking. The ads involve an attack on the record of a clearly identified³ candidate of the opposition party for a single office, the United States Senate. Although made before a nominee has been selected by either party, the clear purpose of the ads is to influence the general election, since voters will not have an opportunity to decide between the Democratic and Republican nominees until the general election.

2. Advisory Opinion 1985-14

A ruling by the FEC subsequent to Advisory Opinion 1984-15, Advisory Opinion 1985-14, confirms the teaching of the former. There, the Democrats proposed certain media ads and direct mailings critical of the Republican Party and, in some cases, particular Members of Congress. The Commission concluded generally that ads which did not identify a particular Congressman, office or election, would qualify as generic party building expenditures, not subject to any limitation.⁴

Where, however, the proposed direct mailing involved reference to a particular Member of Congress by name, and distribution within "all or part" of that Member's Congressional District, the FEC concluded that the

expenditures for producing and disseminating the mailer either with or without the "Vote Democratic" statement will be subject to the Act's limitations and attributable pursuant to 11 C.F.R. 106.1.

The ruling is unequivocal: advertisements such as that directed by Respondent against Congressman AuCoin are

³"Clearly identified" is defined by FEC regulations as unambiguous reference," such as where the name of a candidate appears. 11 C.F.R. § 100.17.

⁴The one exception was the proposed advertisement which referred to "Your Republican Congressman" and included the tag line "Vote Democratic". In this case, the FEC vote was split 3-3 and the Opinion did not reach the issue.

Federal Election Commission

May 15, 1992

Page 7

allocable to limits where it identifies by name the candidate under attack, critiques his or her performance in office or position on issues, and is distributed to the voting constituency.

It is important to note that there is no requirement in either Advisory Opinion 1985-15 or Advisory Opinion 1985-14 that the advertisement, to be attributable, must contain "express advocacy." "Express advocacy" is a term of art under the FECA, 11 C.F.R. § 109.1(b)(2). In Advisory Opinion 1984-15, the FEC recognized that an advertisement was attributable where it "effectively" advocated the defeat of a candidate. In Advisory Opinion 1985-14, the FEC, interpreting Advisory Opinion 1984-15, stated the requirement that an allocable communication include "an electioneering message." The Opinion, in turn, defined "electioneering message" as one "designed to urge the public to elect a certain candidate or party," citing United States v. United Auto Workers, 352 U.S. 567, 587 (1957). On the facts of that particular case, the FEC identified a clear "electioneering message" in direct mailings which clearly identified a Member of Congress and which were distributed within the Member's district with the stated purpose of influencing his or her reelection prospects.

The Republican Committee ads which form the basis of this complaint clearly fall within this category of expenditures -- and must be attributed to limitations under the FECA. The ads identify and criticize Congressman AuCoin unambiguously and have been broadcast to voters throughout Oregon. Since the Senate race involves a state-wide election, this distribution is directed toward the same electorate that will be asked to choose between the Republican and Democratic nominees in the United States Senate general election. Further, the ads were aired and distributed by the Republican Committee with the clear purpose to influence the general election, by attacking Congressman AuCoin -- a candidate whom the party will not directly oppose until the general election.

IV. CONCLUSION

This Complaint does not present complex legal issues. It presents a single issue of compliance by the Republican Committee with § 441a(d) limits on its general election spending. The FEC has ruled on precisely this issue. It has done so in the clearest terms. This precedent is binding on the Republican Committee which cannot conceivably, on

indisputable facts, avoid the application of general election spending limits to its anti-AuCoin spending.

Under these circumstances, the FEC must not delay in holding the Respondent to these limits. This case should be prosecuted on an expedited basis to assure that these limits are observed from now through Election Day. The amount spent by the Republican Committee to date on these anti-AuCoin advertisements must be determined to the dollar and then deducted from the limit still available to the Republican Party under § 441a(d) to influence the Oregon Senate race.

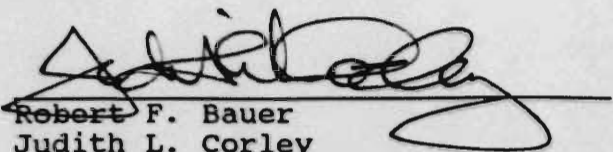
Moreover, because the law is clear, service by the FEC of this complaint on the Respondent should operate as notice that its spending is accountable under § 441a(d). From that day forward, any spending by the Republican Committee in defiance of those limits must be viewed as a knowing and willful violation of the FECA requiring FEC referral to the Justice Department or, at the least, an agency finding of aggravated willful misconduct together with the imposition of appropriately severe remedial action as provided in such cases under the statute. 2 U.S.C. § 437g(d)(1).

On the basis of the foregoing, the Democratic Senatorial Campaign Committee requests that the FEC:

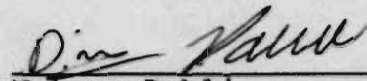
1. Conduct on an expedited basis an investigation of the facts and determine the exact dollar amounts of the anti-AuCoin spending by the Republican Committee;
2. Enter into a prompt conciliation with Respondents to remedy the violations alleged in this Complaint, and most importantly, to assure that the expenditures made to date are accounted for under § 441a(d) limits and that the Respondent is notified that its remaining § 441a(d) limit is no more than the difference between these expenditures and the published § 441a(d) limits; and

3. Impose any and all penalties grounded in violations alleged in this Complaint.

Respectfully submitted,


Robert F. Bauer
Judith L. Corley
Counsel to Democratic Senatorial
Campaign Committee

Subscribed and sworn before me on this 15th day of May,
1992.


Notary Public
My Commission Expires: 10/31/93
DEBRA POWELL
Notary Public, Washington, D.C.

CONGRESSMAN LES AUCOIN IS IN HOT WATER BECAUSE OF
HOT CHECKS. AUCOIN BOUNCED EIGHTY THREE CHECKS FOR OVER
SIXTY ONE THOUSAND DOLLARS.

THAT'S BAD ENOUGH . . BUT CONGRESSMAN AUCOIN HAS HANDLED
IT EVEN WORSE. LAST FALL, WHEN THE CONGRESSIONAL CHECK
BOUNCING SCANDAL WAS DISCOVERED, AUCOIN TOLD THE
OREGONIAN THAT HE HAD BOUNCED ONLY SEVEN CHECKS . . . FOR
FOUR HUNDRED NINETY ONE DOLLARS.

AUCOIN TRIED TO DIMINISH HIS ROLE IN THE SCANDAL BY SAYING
"THERE'S A DIFFERENCE BETWEEN THOSE WHO DELIBERATELY
ABUSE THE SYSTEM AND PEOPLE WHO MAKE NORMAL
HOUSEKEEPING ERRORS."

IT TURNS OUT THAT AUCOIN ABUSED THE SYSTEM AND TRIED TO
HIDE THE TRUTH. A FEW WEEKS AGO WE LEARNED THAT SINCE
NINETEEN EIGHTY NINE HE BOUNCED EIGHTY THREE CHECKS FOR
SIXTY ONE THOUSAND DOLLARS . . . NOT SEVEN CHECKS FOR FOUR
HUNDRED NINETY ONE.

NOW, AUCOIN, WHO'S BEEN IN CONGRESS FOR EIGHTEEN YEARS,
REFUSES TO RELEASE RECORDS OF HIS CHECKS PRIOR TO NINETEEN
EIGHTY NINE.

COME ON LES, TELL US THE WHOLE TRUTH.

Authorized and paid for by the Oregon Republican Party, Jim Whitfield, executive
director.

92 MAY 18 PM 3:50

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OFFICE OF THE CLERK

923040960326

GOP ploy opposes AuCoin, aids Lonsdale for Senate nomination

5/12/92-85

By JEFF MAPES
of The Oregonian staff

The World Wrestling Federation no longer has a corner on tag-team matches.

The Oregon Republican Party is jumping with both feet into the heated Senate Democratic primary race between Rep. Les AuCoin and Harry Lonsdale — with the intention of seeing AuCoin defeated.

Meanwhile, AuCoin brought the Rajneeshes into his hard-fought campaign with Lonsdale by running a new TV commercial that belittles Lonsdale for prominently defending the leader of the former Central Oregon commune.

Oregon Republican Chairman Craig Berkman said the party will spend about \$42,000 on a statewide advertising campaign attacking AuCoin for writing 80 overdrafts at the House bank.

"We'd rather run against Lonsdale than AuCoin," said Berkman, who insisted that the party was operating independently of Sen. Bob Packwood, R-Ore. Berkman has already run newspaper ads chiding AuCoin for the overdrafts.

AuCoin's campaign manager, Mary Beth Cahill, said she had never been in a campaign that faced such an attack from outside the immediate contest.

"For the Republican Party to pile on ... that's a lot to withstand," said Cahill, charging that the GOP was "overstepping the bounds" in trying to pick the Democrat it wants to run against Packwood.

The Republican advertising, which will start Wednesday, comes as AuCoin launched a new advertising attack on Lonsdale in a race that has already been marked by heavy negative campaigning.

By using the Rajneeshes, AuCoin is turning to a line of attack that was successfully used by Sen. Mark O. Hatfield, R-Ore., in his 1990 victory over Lonsdale.

The commercial criticizes Lonsdale for saying in a Nov. 21, 1985, ad — after the group's leader, Bhagwan Shree Rajneesh, was deported — that the "harassment and abuse heaped on this gentle man is some-

ANALYZING THE ADS

Here is an analysis of a new advertisement by Senate candidate Les AuCoin that began running statewide Sunday:

WHAT IT SAYS: "Remember the Rajneesh?"

The radical cult guilty of attempted murder. Harry Lonsdale actually defended them in this newspaper ad calling the Bhagwan gentle. Stockpiled weapons. Murder plots. They even poisoned Oregonians — and Lonsdale still called them gentle. Gentle. And here, Lonsdale says the Rajneesh commune "just may be the happiest town in America." "Happy? Gentle? What is Harry Lonsdale thinking about? It makes you wonder."



THE STRATEGY:

AuCoin clearly hopes the Rajneeshes' negative reputation in Oregon will rub off on Harry Lonsdale. Sen. Mark O. Hatfield used the same kind of attack to help him defeat Lonsdale in the 1990 Senate race.

THE FACTS:

AuCoin's ad was wrong in saying the cult itself was found guilty of attempted murder. Three of the group's top leaders were found guilty of murder conspiracy. Lonsdale's defense of Bhagwan Shree Rajneesh was in a Nov. 21, 1985, newspaper ad written after many of the misdeeds by the group's leaders had become public. Lonsdale's description of it being the "happiest town" was in an Aug. 23, 1984, letter written before the criminal allegations were made.

The Oregonian

thing that all of us, as freedom-loving Americans, can be ashamed of."

The AuCoin ad also refers to a 1984 letter Lonsdale wrote the state attorney general asking him to take a more "gentle approach" in his probe of the Rajneesh commune.

Lonsdale held his own press conference Monday to call it a "television smear attempt" and asked rhetorically: "How low can you go?"

Lonsdale argued that he wrote the ad "in defense of religious freedom" and was not condoning crimes committed by the group's leaders.

But AuCoin said in a later press conference that Lonsdale showed a lack of judgment in defending a cult that was stockpiling weapons at its commune and was also implicated in murder threats and poisoning.

"This was a dangerous cult," said AuCoin, calling Lonsdale's actions

"part of the pattern of a lack of judgment."

Berkman said the Republican Party was paying for the radio advertising out of its federal account, which accepts only contributions that meet federal contribution limits. However, Berkman said he didn't think the advertising would have to count against the federal expenditure limit that allows the Oregon Republican Party to spend no more than \$120,000 helping its candidate in the federal race.

However, an advisory opinion from the Federal Elections Commission suggests such expenditures do have to be counted against the limit.

Berkman said he wasn't too concerned about that because he said Packwood would have plenty of money to run a campaign against either of the Democrats.

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4 AP 04-23-92 04:08 AET
PM-OR--Packwood-AuCoin,0331
Packwood Threatens to Tar AuCoin

47 LINES

PENDLETON, Ore. (AP) U.S. Sen. Bob Packwood says he will make the House check-bouncing scandal a top issue in his re-election campaign if U.S. Rep. Les AuCoin is his Democratic challenger in November.

Packwood, a Republican first elected to the Senate 24 years ago, said the overdrafts at the internal House bank have evoked "more passion than Vietnam," even though it involved very little public money.

On a swing through Eastern Oregon this week, Packwood acknowledged recent polls indicating he would lose to either AuCoin or Bend businessman Harry Lonsdale.

But Packwood said he's trailed in two of three other re-election bids at this point in the campaign. He blamed his position in the polls to the nation's anti-incumbency mood.

"That was simmering," Packwood said of the public's mood, "but the check bouncing made it boil. People can absolutely understand the issue and regard it as an obscene perk."

Packwood criticized AuCoin for admitting last year that he bounced only seven checks, then later acknowledging that the number was actually 81.

"It's a legitimate issue because he lied about it," Packwood said.

An aide to AuCoin countered that Packwood is exploiting an honest mistake that AuCoin admitted publicly.

"Bob Packwood wants to drag this race into the gutter," said Rick Gureghian, an AuCoin campaign spokesman in Portland.

"Bob Packwood knows the only way he can win re-election is if he can divert people's interest from very substantive issues like the economy," Gureghian said. "He has to run a vicious negative campaign to win. He will lie, distort the facts, do anything to be re-elected. He's one of the most cynical politicians in existence."

Packwood said the public's trust in Congress will not be restored until it passes a constitutional amendment requiring a balanced federal budget.

But he said there is a good chance that will occur this summer, especially in light of the check bouncing scandal.

The senator also said that if he faces Lonsdale instead of AuCoin after the state primary next month, he will make the loss of seniority in the Senate one of his top campaign issues.



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 20, 1992

Judith L. Corley
Perkins Coie
607 14th St., NW
Washington, D.C. 20005-2011

RE: MUR 3524

Dear Ms. Corley:

This letter acknowledges receipt on May 18, 1992, of your complaint on behalf of the Democratic Senatorial Campaign Committee alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by the Oregon Republican Party and Bert Farrish, as treasurer, and the Re-elect Packwood Committee and Geoffrey D. Brown, as treasurer. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3524. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Jonathan A. Bernstein
Assistant General Counsel

Enclosure
Procedures

23040960329



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 20, 1992

Oregon Republican Party
Bert Farrish, Treasurer
9900 SW Greenburg Road
Suite 280
Portland, OR 97223

RE: MUR 3524

Dear Mr. Farrish:

The Federal Election Commission received a complaint which indicates that the Oregon Republican Party ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3524. Please refer to this number in all future correspondence.

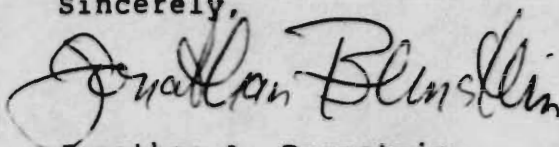
Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Committee and you, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements 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. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

23040960330

If you have any questions, please contact Tony Buckley, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jonathan A. Bernstein
Assistant General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

93040960331



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 20, 1992

Re-elect Packwood Committee
Geoffrey D. Brown, Treasurer
5301 Wisconsin Avenue, NW
Suite 300
Washington, DC 20015

RE: MUR 3524

Dear Mr. Brown:

The Federal Election Commission received a complaint which indicates that the Re-elect Packwood Committee ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3524. Please refer to this number in all future correspondence.

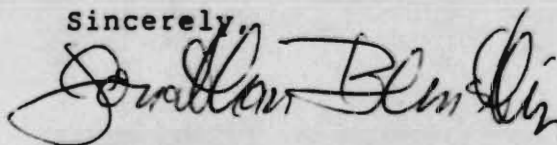
Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Committee and you, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements 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. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

23040960332

If you have any questions, please contact Tony Buckley, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jonathan A. Bernstein
Assistant General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

93040960333

STATEMENT OF DESIGNATION OF COUNSEL

JUN 2 9 14 AM '92

MUR 3524

NAME OF COUNSEL: Jack Quinn

ADDRESS: Arnold & Porter
Three Lafayette Center
1155 - 21st Street, NW, Ninth Floor
Washington, D.C. 20036

TELEPHONE: (202) 872-6904

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.

5/27/92
Date

Geoffrey D. Brown
Signature

RESPONDENT'S NAME: Geoffrey D. Brown, Treasurer

ADDRESS: Re-Elect Packwood Committee

5301 Wisconsin Avenue, NW

Suite 300

HOME PHONE: Washington, DC 20015

BUSINESS PHONE: (202) 244-6500

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 JUN -2 AM 11:21

93040960334

RECEIVED
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COMMISSION
MAIL ROOM

JUN 8 10 59 AM '92

EVES & WADE
ATTORNEYS AT LAW
SUITE 200

3236 S.W. KELLY AVENUE
PORTLAND, OREGON 97201-4679
(503) 227-6226
FAX (503) 227-4971

June 4, 1992

MARK W. EVES
RONALD L. WADE

OF COUNSEL
FRANCIS I. SMITH
(503) 827-5080

VIA FAX NO. (202) 219-3923

Mr. Tony Buckley
Office of General Counsel
Federal Election Commission
Washington, DC 20463

RE: MUR 3524

Dear Mr. Buckley:

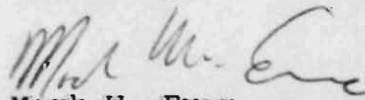
Thank you for the courtesies which you extended to me during our telephone conversation on June 3, 1992. We would like to confirm that your letter dated May 20, 1992, was received by the Oregon Republican Central Committee on May 28, 1992. Therefore, the deadline for responding is June 12, 1992.

This firm did not receive your letter until June 3, 1992. Additional time will be needed in order to determine all relevant facts, and undertake legal research. Therefore, we requested that you provide us with an extension of time of 20 days, or until July 2, 1992. We would like to confirm that you have agreed to provide that extension of time.

You indicated in our conversation that it would be necessary for you to receive a Statement of Designation of Counsel. We have enclosed that document which has been signed by the Treasurer of the Oregon Republican Central Committee, Mr. Bert Farrish. We have provided a hard copy of this letter, together with the original Statement of Designation of Counsel, to you via regular mail.

We will begin work on this matter immediately. Again, we appreciate your courtesy and cooperation.

Sincerely,


Mark W. Eves

MWE:dmm
Enclosure
cc: Oregon Republican Central Committee
Regular mail

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OFFICE OF GENERAL COUNSEL
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STATEMENT OF DESIGNATION OF COUNSEL

MUR 3524
NAME OF COUNSEL: Mark W. Eves
ADDRESS: Eves & Wade
3236 SW Kelly, Suite 200
Portland, OR 97201
TELEPHONE: (503) 227-6226

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.

June 4 1992
Date

Bert Farrish
Signature

RESPONDENT'S NAME: Bert Farrish
ADDRESS: 4305 SW Tunnelwood
Portland, OR 97221
HOME PHONE: (503) 292-2231
BUSINESS PHONE: (503) 286-9681

93040960336



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 10, 1992

Mark W. Eves, Esq.
Eves & Wade
Suite 200
3236 S.W. Kelly Avenue
Portland, Oregon 97201-4679

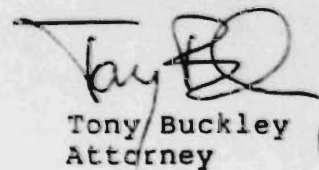
RE: MUR 3524
Oregon Republican Party and
Bert Farrish, as treasurer

Dear Mr. Eves:

This is in response to your letter dated June 4, 1992, which we received on June 8, 1992, requesting an extension of 20 days to respond to the complaint filed against your clients, the Oregon Republican Party and Bert Farrish, as treasurer. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on July 2, 1992.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,


Tony Buckley
Attorney

23040960337

Re-Elect Packwood Committee
5301 Wisconsin Avenue, NW
Washington, DC 20015

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

JUN 9 2 12 PM '92

Geoffrey D. Brown
Treasurer

June 9, 1992

Jonathan A. Bernstein
Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 3524

Dear Mr. Bernstein:

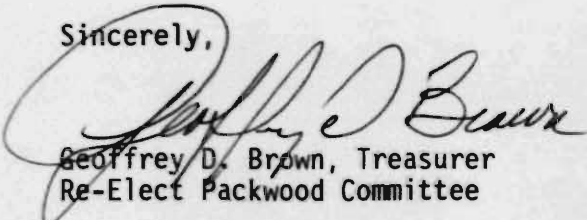
On behalf of the Re-Elect Packwood Committee ("Packwood Committee"), I write in response to your letter dated May 20, 1992 concerning the above-referenced complaint filed by the Democratic Senatorial Campaign Committee ("DSCC").

In its complaint, the DSCC claims that the Oregon Republican State Committee ("State Committee") has "disregarded" the expenditure limitations imposed by the Federal Election Campaign Act ("FECA"), 2 U.S.C. 431 et seq., and Commission regulations promulgated to implement the FECA, 11 C.F.R. Part 100, by spending approximately \$42,000 on advertisements concerning Rep. Les AuCoin, a candidate for the Democratic nomination for U.S. Senate. In particular, the DSCC asserts that the AuCoin advertisements are coordinated party expenditures that the State Committee must report under 2 U.S.C. 441a(d) and implies that the Committee does not intend to so report them.

Although the Packwood Committee is aware of the State Committee's advertisements concerning Rep. AuCoin, the Committee played no role in planning, producing or airing the advertisements. We note, however, that even if the Commission concludes that the State Committee's advertisements are coordinated party expenditures in support of Sen. Packwood, the Packwood Committee has no obligation whatsoever to report or otherwise acknowledge the expenditure. 2 U.S.C. 441a(d); 11 C.F.R. 104.3; Advisory Opinion 1985-14 [5819], at 11,186 n.3 ("[t]he candidate on whose behalf such expenditures are made, however, does not report these expenditures as contributions").

We trust that this response disposes of this matter insofar as the Packwood Committee is concerned. If you have any further questions, please do not hesitate to contact me.

Sincerely,


Geoffrey D. Brown, Treasurer
Re-Elect Packwood Committee

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COMMISSION
MAIL ROOM

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EVES & WADE
ATTORNEYS AT LAW
SUITE 200

3236 S.W. KELLY AVENUE
PORTLAND, OREGON 97201-4679
(503) 227-6226
FAX (503) 227-4971

MARK W. EVES
RONALD L. WADE

OF COUNSEL
FRANCIS I. SMITH
(503) 227-5080

June 30, 1992

VIA FEDERAL EXPRESS

Mr. Jonathan A. Bernstein
Assistant General Counsel
Federal Election Commission
Washington, DC 20463

RE: MUR 3524

Dear Mr. Bernstein:

This firm represents the Oregon Republican Party, and its Treasurer Mr. Bert Farrish. This letter is provided in response to the issues raised in your letter dated May 20, 1992. We would like to confirm that an extension of time for response was granted to our clients through July 2, 1992.

FACTS:

The Oregon Republican Party has been concerned for many years about the conduct in office of Representative Les AuCoin. Over the years, a number of Chairpersons of the Oregon Republican Party have publicly criticized the statements and performance of Representative AuCoin. The Oregon Republican Party, as well as the Republican National Committee, also are very concerned about the conduct of many of the members of Congress in connection with the House Bank.

In the Fall of 1991, it was made public that Representative AuCoin had written NSF checks on his account at the House Bank. When that information was made public, Representative AuCoin stated to the people of Oregon on numerous occasions that he had written only seven NSF checks totalling \$491.00. In the Spring of 1992, it was made public that Representative AuCoin had written 83 NSF checks at the House Bank, totalling approximately \$61,000.00. Therefore, he lied to the people of Oregon.

As a part of a national Republican strategy, the Oregon Republican Party was committed to taking a public stand against abuses at the House Bank. When it became public information that Representative AuCoin had lied on repeated occasions regarding the quantity and amount of his NSF checks at the House Bank, the Oregon Republican Party felt that this information should be thoroughly discussed and aired in public. Unfortunately, the Oregon press paid little attention to the lies of Representative AuCoin. Therefore, the Oregon Republican Party felt obliged to

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OFFICE OF GENERAL COUNSEL

92 JUN 30 1992

Mr. Jonathan A. Bernstein
Assistant General Counsel
June 30, 1992
Page 2

disclose the matter in print and in radio media. Newspaper and radio advertisements were purchased. The amounts expended from January through May of 1992 were less than \$60,000.00. A script of the radio advertisement and a copy of the newspaper advertisements are enclosed. Neither advertisement advocates, expressly or otherwise, the election or defeat of any candidate.

The radio and newspaper advertisements were designed and purchased solely by the Oregon Republican Party with its own funds. There is a strong likelihood that the advertisements would have been purchased even if it was not an election year. The advertisements were not designed or aired in cooperation, consultation, or concert with, or at the suggestion of, any candidate or his or her authorized political committees, or their agents. No part of the materials used in the advertisements were prepared by any candidate or his or her campaign committees or their authorized agents. The advertisements were not made as a part of, or in connection with, the general election campaign of any candidate. See the attached Affidavit of Craig Berkman, the Chairman of the Oregon Republican Party.

LAW AND ARGUMENT:

There are two statutory provisions which restrict the dollar amount of certain contributions or expenditures by State political parties in connection with Federal races. If those statutory provisions do not apply, State political parties are not restricted in the use of their funds. We will demonstrate below that those two statutory provisions don't apply to the facts at hand.

A broad statutory exemption applies to spending by State parties which is neither a contribution nor an expenditure as defined by law. Such spending is typically classified as an "operating expense." The spending undertaken in this matter falls within that classification.

2 USC 441a(a)(2) provides that a multicandidate political committee shall not "... make contributions... to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000.00. . ." (emphasis added). The same \$5,000.00 restriction applies to contributions to "... any other political committee. . ." 11 CFR 110.2 treats primary elections as being separate from general elections. The Oregon Republican Party is a multicandidate political committee.

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Mr. Jonathan A. Bernstein
Assistant General Counsel
June 30, 1992
Page 3

It is uncontroverted that the Oregon Republican Party did not make a direct contribution to any candidate. It merely spent funds for radio and television advertisements. However, 2 USC 441a(a)(7)(B)(i) provides that a contribution to a candidate includes ". . . expenditures made by any person in cooperation, consultation, or concert, with, or at the suggestion of, a candidate, his authorized political committees, or their agents. . . ." (emphasis added). The word "expenditures" above is defined in 2 USC 441a(a)(7)(B)(ii) as ". . . the dissemination, distribution, or republication, in whole or in part, of any broadcast. . . or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents. . . ." (emphasis added).

In order for a "contribution" to have been made, the above provisions require that the materials published be provided by a candidate or his representative, and that the expenditure be made by the State party in some form of cooperation with the candidate. Neither of these requirements have been satisfied. Therefore, the Oregon Republican Party has made no "contribution" to any candidate, and has not violated 2 USC 441a(a)(2).

2 USC 441a(a)(d) contains "expenditure" limitations which specifically apply to State political parties during general elections. 2 USC 441a(d)(3) provides that a State party ". . . may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds . . . the greater of . . . 2 cents multiplied by the voting age population of the State . . . or \$20,000.00" (emphasis added). 11 CFR 110.7(b)(3) provides that the above limitation is added to the \$5,000.00 limitation in 2 USC 441a(a)(2) which is set forth above. 2 USC 441a(c) provides that the above dollar amounts will be adjusted annually based on cost of living increases. The base year for cost of living adjustments is 1976.

The voting age population of the State of Oregon in 1991 was 2,171,034. That amount multiplied by 2 cents per person equals \$43,420.68. The current Oregon limitation adjusted for cost of living increases is approximately \$120,000.00. After adjusting for cost of living increases, as well as adding the \$5,000.00 permitted under 2 USC 441a(a)(2), it is apparent that no violation of 2 USC 441a(d) has taken place.

Even though the above expenditure limitation has not been exceeded, it must be pointed out that the statute does not apply to the spending undertaken in any event. In order for the limitations set forth in 2 USC 441a(d) to take effect, an expenditure by a State party must be made ". . . in connection

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Mr. Jonathan A. Bernstein
Assistant General Counsel
June 30, 1992
Page 4

with the general election campaign of a candidate for Federal office." In this case, the advertisements were published and aired over a period of time prior to the primary election in Oregon. The general election campaign of the Republican candidate had not begun. It could not have begun because neither the Republican candidate, nor anyone else, knew or could have predicted which Democrat candidate would prevail in the primary. No obvious Democrat winner was identified in the polls or elsewhere. In fact, the winning Democrat, Representative AuCoin, ultimately won in a recount by less than 350 total votes for the entire State of Oregon.

It has been contended by the Democratic Senatorial Campaign Committee that the Advisory Opinion of the Federal Election Commission located at 1 Fed. Election Camp Fin. Guide (CCH), paragraph 5766, is controlling in this situation. We disagree. The circumstances here are entirely different than those set forth in the above Advisory Opinion. At the time of that 1984 Advisory Opinion, the presidential nominees of the Republican and Democrat parties were clear and obvious. The proposed advertisements in that case, therefore, of necessity were intended to effect the general election. The primary elections in the various states had been completed, but the nominating conventions had not taken place. The portion of the proposed advertisements described in that Advisory Opinion which requested the American public to "vote Republican" could only have applied to the general election. By contrast, the advertisements purchased by the Oregon Republican Party were not intended to effect the general election and did not propose that the voters vote for or against anyone. If the voters were influenced, the influence would have been at the primary election.

The provisions in 2 USC 441a(a)(2), differ from those in 2 USC 441a(d), in that the former refers to "contributions," and the latter refers to "expenditures." The definition of "expenditure" in 2 USC 441a(a)(7)(B)(i) should be instructive in this context. As indicated above, that definition requires that the published materials be provided by the candidate or his representative, and that the expenditure be made in some form of cooperation with the candidate. Neither of those requirements have been met in this case. The Oregon Republican Party recognizes that the above definition of expenditure does not specifically apply to the statutory provisions in 2 USC 441a(d), but it follows that the Congress intended that the same word have the same meaning within the same general statutory context. Therefore, no "expenditures" as defined in 2 USC 441a(d) were made by the Oregon Republican Party.

Mr. Jonathan A. Bernstein
Assistant General Counsel
June 30, 1992
Page 5

The Democratic Senatorial Campaign Committee contends that the spending undertaken was an "independent expenditure" as defined in 11 CFR 100.16. Such an "independent expenditure" exists if it finances a communication "... expressly advocating the election or defeat of a clearly identified candidate. . . ." It also contends that such "independent expenditure" violates 11 CFR 110.7(6)(4) because it was made in connection with a general election. Both contentions fail under scrutiny. First, no express advocacy of the election or defeat of anyone has taken place. The advertisements were informational and no one was requested to vote for or against anyone. The advertisements were part of an overall Republican program relating to abuses of the House Bank. Second, as indicated above, the spending was not in connection with a general election.

It is the position of the Oregon Republican Party that the contribution and expenditure limitations which are set forth in the above statutes impose unconstitutional restraints upon free speech and expression under the First Amendment of the Constitution of the United States. In Buckley, et al. v. Valeo, et al., 424 US 1(1975) the Supreme Court again recognized the importance of the protection of free speech and expression in connection with political campaigns and the support of political campaigns. In that case, the Court distinguished expenditures from contributions. In the case of expenditures, the Court found that the Government must identify an overwhelming and compelling justification in order to impose restrictions. Spending, such as that which was made in this case, was recognized in Buckley as constituting an exercise of free speech or expression. The Court stated in Buckley: "... being free to engage in unlimited political expression subject to a ceiling on expenditures is like being free to drive an automobile as far and as often as one desires on a single tank of gasoline."

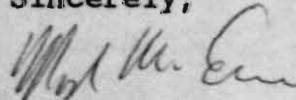
There is substantial additional judicial authority for applying the reasoning in the above Buckley decision to spending by political committees and political parties. In FEC v. Nat. Rep. Sen. Comm. 761 F.Supp 813 (D. D.C. 1991), the District Court adopted a new approach and suggested that political parties and committees are not entitled to the same protection as their members. That decision appears to stand alone, and appears to be inconsistent with positions consistently taken by the Supreme Court of the United States.

Mr. Jonathan A. Bernstein
Assistant General Counsel
June 30, 1992
Page 6

CONCLUSION:

It is apparent that the spending made by the Oregon Republican Party fell within the classification of "operating expense," and was free from statutory restriction and limitation. We urge that the Federal Election Commission take no action in this matter. We would be pleased to discuss this matter with you and to provide any additional supporting information upon request.

Sincerely,



Mark W. Eves

MWE:dmm

Enclosures

cc: Oregon Republican Party
Regular mail

93040960344

AFFIDAVIT

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

The undersigned, Craig Berkman, being of lawful age hereby swears and says:

(1) My name is Craig Berkman and I am of lawful age and the elected Chairman of the Oregon Republican Party.

(2) I have direct knowledge regarding the radio and newspaper advertisements which were purchased by the Oregon Republican Party in 1992 concerning the activities of Representative Les AuCoin in connection with his conduct concerning the House Bank.

(3) The radio and newspaper advertisements were designed and purchased solely by the Oregon Republican Party. Less than \$60,000 was expended. The purposes for purchasing the advertisements were to make public the improper conduct of Representative Les AuCoin regarding the House Bank and his lack of truthfulness, and to make it clear that the Oregon Republican Party demands honesty from its elected leaders. No portion of the materials used in the advertisements was prepared by any candidate or by his or her campaign committee or authorized agents. The advertisements were not made as a part of, or in connection with, the general election campaign of any candidate. It was the idea of the Oregon Republican Party to purchase the advertisements. That idea was developed and brought to completion independent of any candidate. No candidate suggested that the advertisements be purchased, and the advertisements were not a part of any cooperative effort between the Oregon Republican Party and any candidate.

(4) The Oregon Republican Party has very strong feelings about the false statements made by Representative Les AuCoin in connection with his NSF checks at the House Bank. There is a great likelihood that the advertisements would have been purchased even if a primary election was not pending.

Signed and sworn this 29th day of June, 1992.

Craig Berkman
Craig Berkman

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

On this 29th day of June, 1992, personally appeared before me the above named Craig Berkman, and acknowledged the foregoing instrument to be his voluntary act and deed.

Deborah A. Millsap
Notary Public for Oregon
My commission expires: 6/18/93

93040960345

Hey, Congressman AuCoin! Here's how ordinary Oregonians do it.

2 This is the amount of the check you are writing. Please note that the amount on this line cannot exceed the amount on the line above. If it does, your check bounces. (see B5)

1 This is the amount of money in your account before writing a check

4 When making a deposit, fill in the amount on this line. If it does not get credited to your account because concerned. (Some people visit their bank's customer service representative, pound their fist on the counter, and demand to know what happened).

3 This is the amount remaining after writing your check

5 This is the amount that you now have in your account. Your next check should not exceed this amount or you will be stuck with another bounced check. (see B6 again)

6 This is where you would enter "other" charges. Like the \$14.50 some banks collect for bounced checks. (Although the bank provides this list for your use, they actually get upset if you run it too often. 80 times would be considered often. Most banks call it "kiting" and treat it as a serious problem).

Date	Description	Amount	Balance
3/29	1st Paycheck	24.80	24.80
3/30	2nd Paycheck	9.75	34.55
3/31	3rd Paycheck	9.75	44.30
4/1	4th Paycheck	9.75	54.05
4/2	5th Paycheck	9.75	63.80
4/3	6th Paycheck	9.75	73.55
4/4	7th Paycheck	9.75	83.30
4/5	8th Paycheck	9.75	93.05
4/6	9th Paycheck	9.75	102.80
4/7	10th Paycheck	9.75	112.55
4/8	11th Paycheck	9.75	122.30
4/9	12th Paycheck	9.75	132.05
4/10	13th Paycheck	9.75	141.80
4/11	14th Paycheck	9.75	151.55
4/12	15th Paycheck	9.75	161.30
4/13	16th Paycheck	9.75	171.05
4/14	17th Paycheck	9.75	180.80
4/15	18th Paycheck	9.75	190.55
4/16	19th Paycheck	9.75	200.30
4/17	20th Paycheck	9.75	210.05
4/18	21st Paycheck	9.75	219.80
4/19	22nd Paycheck	9.75	229.55
4/20	23rd Paycheck	9.75	239.30
4/21	24th Paycheck	9.75	249.05
4/22	25th Paycheck	9.75	258.80
4/23	26th Paycheck	9.75	268.55
4/24	27th Paycheck	9.75	278.30
4/25	28th Paycheck	9.75	288.05
4/26	29th Paycheck	9.75	297.80
4/27	30th Paycheck	9.75	307.55
4/28	31st Paycheck	9.75	317.30
4/29	32nd Paycheck	9.75	327.05
4/30	33rd Paycheck	9.75	336.80
4/31	34th Paycheck	9.75	346.55
5/1	35th Paycheck	9.75	356.30
5/2	36th Paycheck	9.75	366.05
5/3	37th Paycheck	9.75	375.80
5/4	38th Paycheck	9.75	385.55
5/5	39th Paycheck	9.75	395.30
5/6	40th Paycheck	9.75	405.05
5/7	41st Paycheck	9.75	414.80
5/8	42nd Paycheck	9.75	424.55
5/9	43rd Paycheck	9.75	434.30
5/10	44th Paycheck	9.75	444.05
5/11	45th Paycheck	9.75	453.80
5/12	46th Paycheck	9.75	463.55
5/13	47th Paycheck	9.75	473.30
5/14	48th Paycheck	9.75	483.05
5/15	49th Paycheck	9.75	492.80
5/16	50th Paycheck	9.75	502.55
5/17	51st Paycheck	9.75	512.30
5/18	52nd Paycheck	9.75	522.05
5/19	53rd Paycheck	9.75	531.80
5/20	54th Paycheck	9.75	541.55
5/21	55th Paycheck	9.75	551.30
5/22	56th Paycheck	9.75	561.05
5/23	57th Paycheck	9.75	570.80
5/24	58th Paycheck	9.75	580.55
5/25	59th Paycheck	9.75	590.30
5/26	60th Paycheck	9.75	600.05
5/27	61st Paycheck	9.75	609.80
5/28	62nd Paycheck	9.75	619.55
5/29	63rd Paycheck	9.75	629.30
5/30	64th Paycheck	9.75	639.05
5/31	65th Paycheck	9.75	648.80
6/1	66th Paycheck	9.75	658.55
6/2	67th Paycheck	9.75	668.30
6/3	68th Paycheck	9.75	678.05
6/4	69th Paycheck	9.75	687.80
6/5	70th Paycheck	9.75	697.55
6/6	71st Paycheck	9.75	707.30
6/7	72nd Paycheck	9.75	717.05
6/8	73rd Paycheck	9.75	726.80
6/9	74th Paycheck	9.75	736.55
6/10	75th Paycheck	9.75	746.30
6/11	76th Paycheck	9.75	756.05
6/12	77th Paycheck	9.75	765.80
6/13	78th Paycheck	9.75	775.55
6/14	79th Paycheck	9.75	785.30
6/15	80th Paycheck	9.75	795.05
6/16	81st Paycheck	9.75	804.80
6/17	82nd Paycheck	9.75	814.55
6/18	83rd Paycheck	9.75	824.30
6/19	84th Paycheck	9.75	834.05
6/20	85th Paycheck	9.75	843.80
6/21	86th Paycheck	9.75	853.55
6/22	87th Paycheck	9.75	863.30
6/23	88th Paycheck	9.75	873.05
6/24	89th Paycheck	9.75	882.80
6/25	90th Paycheck	9.75	892.55
6/26	91st Paycheck	9.75	902.30
6/27	92nd Paycheck	9.75	912.05
6/28	93rd Paycheck	9.75	921.80
6/29	94th Paycheck	9.75	931.55
6/30	95th Paycheck	9.75	941.30
6/31	96th Paycheck	9.75	951.05
7/1	97th Paycheck	9.75	960.80
7/2	98th Paycheck	9.75	970.55
7/3	99th Paycheck	9.75	980.30
7/4	100th Paycheck	9.75	990.05

This is a check register.

For many Oregonians, keeping a checkbook balanced is a responsibility they take very seriously. Congressman Les AuCoin, who bounced 80 checks totalling \$61,000 with no penalties or interest, obviously does not. And that's just since 1989. Who knows what happened from the time he may have opened his U.S. House Bank account in 1975?

This advertisement paid for as a public service to Congressman Les AuCoin by the Oregon Republican Party, which believes that keeping a balanced checkbook is a pretty good indication of how in touch you are with the lives of real Oregonians.
Jan Whitfield, Executive Director

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 JUN 31 PM 3:11

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Oregon GOP
"Hot Stuff" :60

CONGRESSMAN LES AUCOIN IS IN HOT WATER. . . . BECAUSE OF
HOT CHECKS. AUCOIN BOUNCED EIGHTY THREE CHECKS FOR OVER
SIXTY ONE THOUSAND DOLLARS.

THAT'S BAD ENOUGH. . . BUT CONGRESSMAN AUCOIN HAS HANDLED
IT EVEN WORSE. LAST FALL, WHEN THE CONGRESSIONAL CHECK
BOUNCING SCANDAL WAS DISCOVERED, AUCOIN TOLD THE
OREGONIAN THAT HE HAD BOUNCED ONLY SEVEN CHECKS . . . FOR
FOUR HUNDRED NINETY ONE DOLLARS.

AUCOIN TRIED TO DIMINISH HIS ROLE IN THE SCANDAL BY SAYING
"THERE'S A DIFFERENCE BETWEEN THOSE WHO DELIBERATELY
ABUSE THE SYSTEM AND PEOPLE WHO MAKE NORMAL
HOUSEKEEPING ERRORS."

IT TURNS OUT THAT AUCOIN ABUSED THE SYSTEM AND TRIED TO
HIDE THE TRUTH. A FEW WEEKS AGO WE LEARNED THAT SINCE
NINETEEN EIGHTY NINE HE BOUNCED EIGHTY THREE CHECKS FOR
SIXTY ONE THOUSAND DOLLARS. . . . NOT SEVEN CHECKS FOR FOUR
HUNDRED NINETY ONE.

NOW, AUCOIN, WHO'S BEEN IN CONGRESS FOR EIGHTEEN YEARS,
REFUSES TO RELEASE RECORDS OF HIS CHECKS PRIOR TO NINETEEN
EIGHTY NINE.

COME ON LES, TELL US THE WHOLE TRUTH.

Authorized and paid for by the Oregon Republican Party, Jim Whitfield, executive
director.

93040960347

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

FIRST GENERAL COUNSEL'S REPORT

MUR #3524
DATE COMPLAINT RECEIVED
BY OGC: May 18, 1992
DATE OF NOTIFICATION TO
RESPONDENTS: May 20, 1992
STAFF MEMBER: Tony Buckley

COMPLAINANT: Democratic Senatorial Campaign Committee

RESPONDENTS: Oregon Republican Party and
Bert Farrish, as treasurer

Re-Elect Packwood Committee and
Geoffrey D. Brown, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 434(b)(6)(B)(iv)
2 U.S.C. § 441a(d)(3)
11 C.F.R. § 104.3(b)(1)(viii)
11 C.F.R. § 110.7(b)(4)

INTERNAL REPORTS CHECKED: 1992 April Quarterly Report
1992 July Quarterly Report

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

On May 15, 1992, the Democratic Senatorial Campaign Committee filed a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by the Oregon Republican State Committee. Notification of the complaint was made to the Oregon Republican Party and Bert Farrish, as treasurer (the "Party"). Because the complaint and attached news

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articles suggested possible violations by the principal campaign committee of Senator Robert Packwood, notification was also made to the Re-Elect Packwood Committee and Geoffrey D. Brown, as treasurer (the "Packwood Committee").

A response on behalf of the Packwood Committee was received on June 9, 1992. A response on behalf of the Party, which had been granted a 20-day extension, was received on June 30, 1992.

II. FACTUAL AND LEGAL ANALYSIS

Complainant alleges, and it is uncontroverted, that the Party ran newspaper and radio ads critical of Congressman Les AuCoin at a time when Congressman AuCoin was a candidate for the Democratic nomination for Senator from Oregon. Indeed, an article appearing in the May 12, 1992 edition of The Oregonian states that the Party's radio ads were scheduled to begin appearing on May 13, 1992, just one week before the primary election. Complainant further alleges that the Party must account for funds spent for these advertisements pursuant to the limit at 2 U.S.C. § 441a(d), and that it must abide by the limit established at 2 U.S.C. § 441a(d) in making such expenditures.

The Party states that it spent less than \$60,000 on such ads. However, the Party alleges that the costs associated with the ads should be considered "operating expenses," and that no limits should be placed on them. The Party argues that costs associated with the ads should not be considered against the limits at

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section 441a(d) because the "general election campaign of the Republican candidate had not begun. It could not have begun because neither the Republican candidate, nor anyone else, knew or could have predicted which Democrat candidate would prevail in the primary."

Pursuant to 2 U.S.C. § 441a(d)(3), a State committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for the office of Senator who is affiliated with that party, which exceeds the greater of two cents multiplied by the voting age population of the State, or \$20,000. For the 1992 election cycle, the State committee in Oregon may spend up to \$120,091.76 on coordinated expenditures for its candidate. See FEC Record, Volume 18, Number 3 (March 1992). A political committee such as the Party, which is not an authorized committee, must report such expenditures separately. See 11 C.F.R. § 104.3(b)(1)(viii). Line 25 on Page 2 of the Commission's FEC Form 3X, and the Commission's Schedule F, are reserved for reporting such expenditures. In reporting such expenditures, a committee must include the name of the person receiving such expenditures; the date, amount and purpose of such expenditures; and the name of, and office sought by, the candidate on whose behalf the expenditure is made. See 2 U.S.C. § 434(b)(6)(B)(iv). A party political committee is incapable of making independent

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expenditures in connection with the campaigns of its candidates for Federal office. See 11 C.F.R. § 110.7(b)(4).

In Advisory Opinion 1984-15, the Commission examined advertisements to be run by the Republican National Committee prior to the Democratic National Convention in 1984. These advertisements featured text pieces critical of the leading Democratic presidential candidate, and ended with the tag line, "Vote Republican." The Commission determined that the costs of these advertisements should be considered against the limits of 2 U.S.C. § 441a(d) because such expenditures were made "for the purpose of influencing the outcome of the general election." 1 Fed. Election Camp. Fin. Guide (CCH) at 11,070 (May 31, 1986).

In determining that section 441a(d) should apply, the Commission noted that its

regulations contemplate that contributions may be received with respect to the general election before the date of the primary election or nomination. See 11 C.F.R. § 102.9(e). Second, nothing in the Act, its legislative history, Commission regulations, or court decisions indicates that coordinated party expenditures must be restricted to the time period between nomination and the general election. . . . Where a candidate appears assured of a party's presidential nomination, the general election campaign, at least from the political party's perspective, may begin prior to the formal nomination.

Id. at 11,069. The Commission also noted that for a coordinated party expenditure to occur, it is not required for the party to

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consult or coordinate with the candidate. Id. The proper analytical focus, according to the Commission, is whether the advertisements in question are made for the purpose of influencing the general election. Id.

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In AO 1985-14, the Commission reiterated its two-prong test for determining whether funds expended on a communication would be considered to be made in connection with the general election campaign and thus subject to the limitations at section 441a(d), noting that they would apply "where the communication both (1) depicted a clearly identified candidate and (2) conveyed an electioneering message." 2 Fed. Election Camp. Fin. Guide (CCH) at 11,185 (May 30, 1985). The Commission noted that "electioneering messages include statements 'designed to urge the public to elect a certain candidate or party.' United States v. United Auto Workers, 352 U.S. 567, 587 (1957)." Id.

In this framework, the Commission considered certain ads to be run by the Democratic Congressional Campaign Committee against Republican House candidates well before the primary elections. Regarding a proposed mailer critical of a single, named Republican congressman, without any tag line urging readers to "Vote Democratic," which was to be distributed in part or all of the congressman's district, the Commission determined that monies expended on these communications had to be reported pursuant to section 441a(d), and would count against the committee's limit.

Id. at 11,186. Thus, the Commission must have concluded that such communications contain electioneering messages.¹

The communications at issue here are a radio ad and a newspaper advertisement. The transcript of the radio ad

1. This ad was described in the advisory opinion as follows:

SAMPLE MAILER
17 x 22/One Fold

Front Face
8 1/2 x 11

Bulk Mail

Wave of the future?

[dye-cut; beautiful sunset;
couple walking in ocean
surf/beach]

Inside

Fold

17 x 22

The wave of the future
could be an oil spill
if Cong. X has his way!

Text

List of X's contributions
from oil industry

[Picture of giant
oil-derrick in ocean
ruins the lovely
picture]

[same couple on beach]

Back Cover
8 1/2 x 11

Don't be fooled by Republican
rhetoric. Save our coastal
environment

Let Congressman X know how you
feel.

Id. at 11,184.

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identifies Congressman AuCoin by name, stating that he is in "hot water" because he "bounced eighty three checks for over sixty one thousand dollars." The ad criticizes how Congressman AuCoin handled the disclosure of this information, and ends by suggesting that he is withholding information and lying to the people of Oregon.²

The newspaper ad features a picture of a checkbook.³ At the top of the ad is the statement: "Hey, Congressman AuCoin! Here's

2. The full text of the ad is as follows:

Congressman Les AuCoin is in hot water . . . because of hot checks. AuCoin bounced eighty-three checks for over sixty-one thousand dollars.

That's bad enough . . . but Congressman AuCoin has handled it even worse. Last Fall, when the Congressional check bouncing scandal was discovered, AuCoin told The Oregonian that he had bounced only seven checks . . . for four hundred ninety-one dollars.

AuCoin tried to diminish his role in the scandal by saying "There's a difference between those who deliberately abuse the system and people who make normal housekeeping errors."

It turns out that AuCoin abused the system and tried to hide the truth. A few weeks ago we learned that since nineteen eighty-nine he bounced eighty-three checks for sixty-one thousand dollars . . . not seven checks for four hundred ninety-one.

Now, AuCoin, who's been in Congress for eighteen years, refuses to release records of his checks prior to nineteen eighty-nine.

Come on, Les, tell us the whole truth.

Authorized and paid for by the Oregon Republican Party, Jim Whitfield, executive director.

3. This ad is reproduced at Attachment 2.

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how ordinary Oregonians do it." The ad goes on to describe how to balance a checkbook, and in doing so aims some pointed comments at Congressman AuCoin. The ad further suggests that, while Oregonians take keeping a checkbook balanced seriously, Congressman AuCoin does not. The ad ends with the following disclaimer: "This advertisement paid for as a public service to Congressman Les AuCoin by the Oregon Republican Party, which believes that keeping a balanced checkbook is a pretty good indication of how in touch you are with the lives of real Oregonians. Jim Whitfield, Executive Director."

The ads in the present matter resemble the ads critical of single, named Republican candidates in AO 1985-14. Most obviously, the ads were critical of only one candidate, Mr. AuCoin, who is identified by name. Also, ads were published in The Oregonian newspaper and radio spots were apparently broadcast on stations in Oregon. Thus, these ads were "distributed" in Mr. AuCoin's potential "district."

The language of the ads appears calculated to cause voters to mistrust Congressman AuCoin and deny him their votes. Both ads portray Congressman AuCoin as withholding information from the citizens of Oregon. The radio ad states directly that Congressman AuCoin "abused the system." And the newspaper ad suggests that Congressman AuCoin is out of touch "with the lives of real Oregonians."

Additionally, the Chairman of the Party is quoted in The Oregonian article as saying "'[w]e'd rather run against Lonsdale than AuCoin'," and thus suggests that the overall intent of the

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ads was to advance the general election prospects of the Republican candidate, Senator Packwood, either by affecting the outcome of the Democratic primary election, or by weakening Mr. AuCoin should he prevail.⁴ Also, an Associated Press wire report dated April 23, 1992 states that "U.S. Sen. Bob Packwood says he will make the House check-bouncing scandal a top issue in his re-election campaign if U.S. Rep. Les AuCoin is his Democratic challenger in November." Thus, it appears that the Party was engaging in general election activity prior to the primary election.

Indeed, as Senator Packwood has served in that capacity since 1969, it would have been reasonable for the Party to assume that he was "assured of [its] . . . nomination," so that, "the general election campaign, at least from [the Party's] perspective, [could] begin." Accordingly, this Office believes that the ads contained an electioneering message, and that the monies spent on the advertisements in question should be considered coordinated campaign expenditures by the Committee pursuant to 2 U.S.C. § 441a(d)(3)(i).

A review of the Committee's 1992 April and July Quarterly Reports shows that it has not reported any amounts as having been expended pursuant to 2 U.S.C. § 441a(d)(3)(i). Neither report shows any amount in Line 25 on Page 2, and no Schedule F accompanied either report. Accordingly, this Office recommends

4. Indeed, this possibility also existed within the facts as presented in AO 1985-14, as those ads were distributed prior to the primary elections.

that the Commission find reason to believe that the Oregon Republican Party and Bert Farrish, as treasurer, violated 2 U.S.C. § 434(b)(6)(B)(iv) by failing to report coordinated campaign expenditures made on behalf of Senator Robert Packwood, and that it approve the attached Factual and Legal Analysis.⁵ There is no evidence that Senator Packwood's principal campaign committee was in any way involved in the production or dissemination of the ads in question. Accordingly, this Office recommends that the Commission find no reason to believe that Re-Elect Packwood Committee and Geoffrey D. Brown, as treasurer, violated the Act with respect to the issues in this matter.

III. RECOMMENDATIONS

1. Find reason to believe that the Oregon Republican Party and Bert Farrish, as treasurer, violated 2 U.S.C. § 434(b)(6)(B)(iv).
2. Find no reason to believe that Re-Elect Packwood Committee and Geoffrey D. Brown, as treasurer, violated the Act with respect to the issues in this matter.

5. In MUR 2559, a conciliation agreement was reached with the Party after a finding of probable cause to believe as to a violation of 2 U.S.C. § 441a(f), which was premised on the Party's exceeding the limits established at section 441a(d) on behalf of the campaign of Bruce Long for the U.S. House of Representatives in 1986. This matter was closed on February 25, 1991.

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3. Approve the attached Factual and Legal Analysis and the appropriate letters.

Lawrence M. Noble
General Counsel

10-20-92
Date

BY:


Lois G. Lerner
Associate General Counsel

Attachments

1. Complaint
2. Response of the Party
3. Response of the Packwood Committee
4. Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20461

MEMORANDUM

TO: LAWRENCE NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DONNA ROACH *DR*
COMMISSION SECRETARY

DATE: OCTOBER 26, 1992

SUBJECT: MUR 3524 - GENERAL COUNSEL'S REPORT
DATED OCTOBER 20, 1992

The above-captioned document was circulated to the
Commission on WEDNESDAY, OCT. 21, 1992 at 4:00 P.M.

Objection(s) have been received from the
Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	<u>XXX</u>
Commissioner Elliott	<u>XXX</u>
Commissioner McDonald	<u> </u>
Commissioner McGarry	<u> </u>
Commissioner Potter	<u> </u>
Commissioner Thomas	<u> </u>

This matter will be placed on the meeting agenda
for TUESDAY, NOVEMBER 3, 1992

Please notify us who will represent your Division before
the Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Oregon Republican Party and) MUR 3524
Bert Farrish, as treasurer;)
Re-Elect Packwood Committee and)
Geoffrey D. Brown, as treasurer.)

CERTIFICATION

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I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on November 3, 1992, do hereby certify that the Commission decided by a vote of 6-0 to continue the consideration of the General Counsel's October 20, 1992 report on MUR 3524 to the executive session of November 17, 1992.

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

Attest:

11-3-92
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3524
Oregon Republican Party and)
Bert Farrish, as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the
Federal Election Commission executive session on December 1,
1992, do hereby certify that the Commission decided by a
vote of 4-2 to take the following actions in MUR 3524:

1. Find reason to believe that the Oregon
Republican Party and Bert Farrish, as
treasurer, violated 2 U.S.C. § 434(b)
(6)(B)(iv).
2. Find no reason to believe that Re-Elect
Packwood Committee and Geoffrey D. Brown,
as treasurer, violated the Act with
respect to the issues in this matter.

(continued)

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3. Approve the Factual and Legal Analysis and the appropriate letters as recommended in the General Counsel's report dated October 20, 1992.

Commissioners McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioners Aikens and Elliott dissented.

Attest:

12-2-92
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 11, 1992

Geoffrey D. Brown, Treasurer
Re-Elect Packwood Committee
5301 Wisconsin Avenue, N.W.
Washington, D.C. 20015

RE: MUR 3524

Dear Mr. Brown:

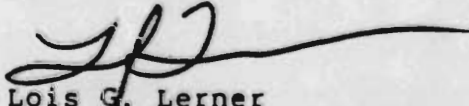
On May 20, 1992, the Federal Election Commission notified the Re-Elect Packwood Committee ("Committee") and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On December 1, 1992, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe the Committee and you, as treasurer, violated the Act with respect to the issues in this matter.

This matter will become a part of the public record within 30 days after the file has been closed. The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the matter is closed. The Commission will notify you when the file has been closed.

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 11, 1992

Mark W. Eves, Esq.
Eves & Wade
Suite 200
3236 S.W. Kelly Avenue
Portland, Oregon 97201-4679

RE: MUR 3524
Oregon Republican Party and
Bert Farrish, as treasurer

Dear Mr. Eves:

On May 20, 1992, the Federal Election Commission notified your clients, the Oregon Republican Party and Bert Farrish, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on December 1, 1992, found that there is reason to believe the Oregon Republican Party and Bert Farrish, as treasurer, violated 2 U.S.C. § 434(b)(6)(B)(iv), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your clients, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending

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Mark W. Eves, Esq.
MUR 3524
Page 2

declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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

If you have any questions, please contact Tony Buckley, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosure
Factual & Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Oregon Republican Party and
Bert Farrish, as treasurer

MUR: 3524

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Pursuant to 2 U.S.C. § 441a(d)(3), a State committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for the office of Senator who is affiliated with that party, which exceeds the greater of two cents multiplied by the voting age population of the State, or \$20,000. A political committee such as the Party, which is not an authorized committee, must report such expenditures separately. See 11 C.F.R. § 104.3(b)(1)(viii). Line 25 on Page 2 of the Commission's FEC Form 3X, and the Commission's Schedule F, are reserved for reporting such expenditures. In reporting such expenditures, a committee must include the name of the person receiving such expenditures; the date, amount and purpose of such expenditures; and the name of, and office sought by, the candidate on whose behalf the expenditure is made. See 2 U.S.C. § 434(b)(6)(B)(iv). A party political committee is incapable of making independent expenditures in connection with the campaigns of its candidates for Federal office. See 11 C.F.R. § 110.7(b)(4).

In Advisory Opinion 1984-15, the Commission examined advertisements to be run by the Republican National Committee prior to the Democratic National Convention in 1984. These advertisements featured text pieces critical of the leading

Democratic presidential candidate, and ended with the tag line, "Vote Republican." The Commission determined that the costs of these advertisements should be considered against the limits of 2 U.S.C. § 441a(d) because such expenditures were made "for the purpose of influencing the outcome of the general election."

1 Fed. Election Camp. Fin. Guide (CCH) at 11,070 (May 31, 1986).

In determining that section 441a(d) should apply, the Commission noted that its

regulations contemplate that contributions may be received with respect to the general election before the date of the primary election or nomination. See 11 C.F.R. § 102.9(e). Second, nothing in the Act, its legislative history, Commission regulations, or court decisions indicates that coordinated party expenditures must be restricted to the time period between nomination and the general election. . . . Where a candidate appears assured of a party's presidential nomination, the general election campaign, at least from the political party's perspective, may begin prior to the formal nomination.

Id. at 11,069. The Commission also noted that for a coordinated party expenditure to occur, it is not required for the party to consult or coordinate with the candidate. Id. The proper analytical focus, according to the Commission, is whether the advertisements in question are made for the purpose of influencing the general election. Id.

In AO 1985-14, the Commission reiterated its two-prong test for determining whether funds expended on a communication would be considered to be made in connection with the general election campaign and thus subject to the limitations at section 441a(d), noting that they would apply "where the communication both (1) depicted a clearly identified candidate and (2) conveyed an

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electioneering message." 2 Fed. Election Camp. Fin. Guide (CCH) at 11,185 (May 30, 1985). The Commission noted that "electioneering messages include statements 'designed to urge the public to elect a certain candidate or party.' United States v. United Auto Workers, 352 U.S. 567, 587 (1957)." Id.

Respondents published two communications, a radio spot and a newspaper advertisement, critical of Congressman Les AuCoin prior to the 1992 Democratic primary in which he was a contestant. The transcript of the radio ad identifies Congressman AuCoin by name, stating that he is in "hot water" because he "bounced eighty three checks for over sixty one thousand dollars." The ad criticizes how Congressman AuCoin handled the disclosure of this information, and ends by suggesting that he is withholding information and lying to the people of Oregon.¹

1. The full text of the ad is as follows:

Congressman Les AuCoin is in hot water . . . because of hot checks. AuCoin bounced eighty-three checks for over sixty-one thousand dollars.

That's bad enough . . . but Congressman AuCoin has handled it even worse. Last Fall, when the Congressional check bouncing scandal was discovered, AuCoin told The Oregonian that he had bounced only seven checks . . . for four hundred ninety-one dollars.

AuCoin tried to diminish his role in the scandal by saying "There's a difference between those who deliberately abuse the system and people who make normal housekeeping errors."

It turns out that AuCoin abused the system and tried to hide the truth. A few weeks ago we learned that since nineteen eighty-nine he bounced eighty-three checks for sixty-one thousand dollars . . . not seven checks for four hundred ninety-one.

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The newspaper ad features a picture of a checkbook. At the top of the ad is the statement: "Hey, Congressman AuCoin! Here's how ordinary Oregonians do it." The ad goes on to describe how to balance a checkbook, and in doing so aims some pointed comments at Congressman AuCoin. The ad further suggests that, while Oregonians take keeping a checkbook balanced seriously, Congressman AuCoin does not. The ad ends with the following disclaimer: "This advertisement paid for as a public service to Congressman Les AuCoin by the Oregon Republican Party, which believes that keeping a balanced checkbook is a pretty good indication of how in touch you are with the lives of real Oregonians. Jim Whitfield, Executive Director."

The ads in the present matter resemble the ads critical of single, named Republican candidates in AO 1985-14. Most obviously, the ads were critical of only one candidate, Mr. AuCoin, who is identified by name. Also, ads were published in The Oregonian newspaper and radio spots were apparently broadcast on stations in Oregon. Thus, these ads were "distributed" in Mr. AuCoin's potential "district."

The language of the ads appears calculated to cause voters to mistrust Congressman AuCoin and deny him their votes. Both ads

(Footnote 1 continued from previous page)

Now, AuCoin, who's been in Congress for eighteen years, refuses to release records of his checks prior to nineteen eighty-nine.

Come on, Les, tell us the whole truth.

Authorized and paid for by the Oregon Republican Party, Jim Whitfield, executive director.

portray Congressman AuCoin as withholding information from the citizens of Oregon. The radio ad states directly that Congressman AuCoin "abused the system." And the newspaper ad suggests that Congressman AuCoin is out of touch "with the lives of real Oregonians."

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Additionally, the Chairman of the Party is quoted in an article in The Oregonian article as saying "'[w]e'd rather run against Lonsdale than AuCoin'," and thus suggests that the overall intent of the ads was to advance the general election prospects of the Republican candidate, Senator Packwood, either by affecting the outcome of the Democratic primary election, or by weakening Mr. AuCoin should he prevail. Also, an Associated Press wire report dated April 23, 1992 states that "U.S. Sen. Bob Packwood says he will make the House check-bouncing scandal a top issue in his re-election campaign if U.S. Rep. Les AuCoin is his Democratic challenger in November." Thus, it appears that the Party was engaging in general election activity prior to the primary election.

Indeed, as Senator Packwood has served in that capacity since 1969, it would have been reasonable for the Party to assume that he was "assured of [its] . . . nomination," so that, "the general election campaign, at least from [the Party's] perspective, [could] begin." Accordingly, it appears that the monies spent on the advertisements in question should be considered coordinated campaign expenditures by the Committee pursuant to 2 U.S.C. § 441a(d)(3)(i).

A review of the Committee's 1992 April and July Quarterly

Reports shows that it has not reported any amounts as having been expended pursuant to 2 U.S.C. § 441a(d)(3)(i). Neither report shows any amount in Line 25 on Page 2, and no Schedule F accompanied either report. Accordingly, there is reason to believe that the Oregon Republican Party and Bert Farrish, as treasurer, violated 2 U.S.C. § 434(b)(6)(B)(iv) by failing to report coordinated campaign expenditures made on behalf of Senator Robert Packwood.

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MARK W. EVES
RONALD L. WADE

EVES & WADE
ATTORNEYS AT LAW
SUITE 200
3236 S.W. KELLY AVENUE
PORTLAND, OREGON 97201-4679
(503) 227-6226
FAX (503) 227-4971

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OF COUNSEL
FRANCIS I. SMITH
(503) 227-3080

December 18, 1992

VIA FAX NO. (202) 219-3923

Mr. Tony Buckley
Staff Attorney
Federal Election Commission
Washington, DC 20463

RE: MUR 3524, Oregon Republican Party and Bert Farrish, as
Treasurer

Dear Mr. Buckley:

Thank you for the courtesies which you extended to me by telephone on December 18, 1992. By this letter, we are requesting pre-probable cause conciliation in connection with the above matter.

We have been in contact with the Chairman of the Oregon Republican Party regarding the question raised by you, namely whether the Republican National Committee or the Republican National Senatorial Committee entered into any agreement with the Oregon Republican Party under which expenditures in support of the general election of Senator Robert Packwood would be made by the Republican National Committee or the Republican National Senatorial Committee. No such agreement exists. In addition, at the time when the expenditures were made by the Oregon Republican Party, no expenditures of any kind had been made in support of the general or primary elections of Senator Robert Packwood by either the Republican National Committee or the Republican National Senatorial Committee. Also, the Oregon Republican Party had no knowledge of any plans of the Republican National Committee or the Republican National Senatorial Committee to expend any funds in support of Senator Packwood.

We also would like you to be advised of the role which Treasurer Bert Farrish has played in this matter. Mr. Farrish is not an attorney and does not have experience in financial matters involving political parties or campaigns. He was asked to serve as the Treasurer of the Oregon Republican Party. He was flattered by the offer and accepted. In the spring of 1992, he attended a class sponsored by the Federal Election Commission relating to the methods of reporting contributions and expenditures. The method of his reporting of the expenditures involved in this matter to the Federal Election Commission was Mr. Farrish's best effort to find the appropriate category for the

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Mr. Tony Buckley
Staff Attorney
Federal Election Commission
December 18, 1992
Page 2

type of expenditure involved. Because no coordination of the activity took place with the office of Senator Robert Packwood, and because Mr. Farrish was not aware of Advisory Opinion 1984-15, he had no reason to believe that the expenditures could have been characterized as coordinated expenditures. The guidance provided by the FEC in the spring of 1992 did not help him on this matter. We will be providing an affidavit signed by Mr. Farrish.

The decision to make the expenditures which are involved in this matter was made by the Chairman of the Oregon Republican Party. Mr. Farrish took no part in the decision making, and learned of the expenditures after they had been made.

New leadership of the Oregon Republican Party will be elected within the first 16 days of January of 1993. Therefore, it is very important that we attempt to resolve this matter immediately.

Thanks again for your assistance.

Sincerely,

Mark W. Eves

Mark W. Eves

MWE:dmm
cc: Oregon Republican Party
Mr. Bert Farrish
Regular mail

93040960373

MARK W. EVES
RONALD L. WADE

EVES & WADE
ATTORNEYS AT LAW
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3236 S.W. KELLY AVENUE
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OF COUNSEL
FRANCIS I. SMITH
(503) 227-5080

December 23, 1992

VIA FAX NO. (202) 219-3923

Mr. Tony Buckley
Staff Attorney
Federal Election Commission
Washington, DC 20463

RE: MUR 3524, Oregon Republican Party and Bert Farrish, as
Treasurer

Dear Mr. Buckley:

Enclosed is an Affidavit of Oregon Republican Party Treasurer Bert Farrish which supports the statements made in our letter to you dated December 18, 1992. As you will see, at the time when the expenditure was made, to the best of our knowledge, the Republican National Committee and the Republican National Senatorial Committee had not made any expenditures on behalf of Senator Packwood. Moreover, the Oregon Republican Party was not aware of any intent on the part of those committees to make expenditures. If, subsequent to that time, either of those committees did make expenditures in support of Senator Packwood, the actions would have been beyond the control of Mr. Farrish or the Oregon Republican Party.

As we have discussed, Mr. Farrish acted in good faith in connection with his actions. Ordinary common sense would not have indicated that the expenditure involved could have been considered to have been coordinated with Senator Packwood, when neither Senator Packwood nor his staff had anything to do with the advertisements involved. Moreover, even if it is assumed that the expenditures were coordinated, according to the strict definition created by the Federal Election Commission, no violation of the expenditure limitations took place. The method of reporting was, at worst, a harmless mistake.

During our telephone conversation on December 22, 1992, you requested the following information:

- (1) The total amount expended. That amount is \$45,007.34.
- (2) The locations in the reports submitted to the FEC of the amounts expended. Copies of the applicable pages of the reports with the amounts circled are enclosed.

92 DEC 28 PM 12:26

RECEIVED
FEDERAL ELECTION COMMISSION

23040960374

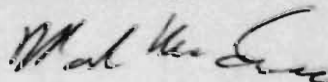
Mr. Tony Buckley
Staff Attorney
Federal Election Commission
December 23, 1992
Page 2

(3) Copies of invoices or billings. Those copies are enclosed. Please note that some confusion existed regarding the Invoice dated May 13, 1992, and the reporting. \$1,550 of the amount was paid by the Chairman in advance of any invoicing by the vendor. The bookkeeper for the Party thought that the payment was for public relations activities unrelated to Representative AuCoin and entered the payment into her computer under that category at that time. Later, in response to the enclosed memo dated May 11, 1992, \$41,784 was paid and reported as consulting expense. This was submitted before the May 13, 1992, Invoice was received. The FEC report is prepared based upon computer entries made at the time of payment.

(4) Copies of correspondence, if any, related to the above invoices or billings. Apparently everything was handled in person or by telephone. No correspondence could be found except the enclosed memo dated May 11, 1992.

If you have any questions regarding this matter, please contact us. We would like to resolve this matter at the first opportunity.

Sincerely,



Mark W. Eves

MWE:dmm
Enclosures
cc: Oregon Republican Party
Mr. Bert Farrish
Regular mail

23040960375

AFFIDAVIT

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

The undersigned, Bert Farrish, being of lawful age hereby swears and says:

(1) My name is Bert Farrish and I am of lawful age and the elected Treasurer of the Oregon Republican Party.

(2) I have direct knowledge regarding the radio and newspaper advertisements which were purchased by the Oregon Republican Party in 1992 prior to the primary election concerning the activities of Representative Les AuCoin in connection with his conduct concerning the House Bank.

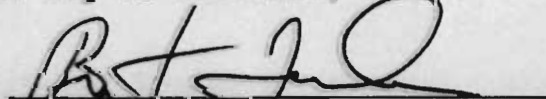
(3) I am not an attorney and I do not have experience in financial matters involving political parties and campaigns. However, in the Spring of 1992, I attended a class sponsored by the Federal Election Commission so that I could learn the methods of reporting contributions and expenditures.

(4) The decision to make the expenditures for the above radio and newspaper advertisements was made by the Chairman of the Oregon Republican Party. I took no part in the decision making, and I learned of the expenditures after they were made. When I learned of the expenditures, I was aware of no other expenditures made by the Republican National Committee or the Republican National Senatorial Committee in support of the general or primary elections of Senator Robert Packwood. I also knew of no plans on the part of the Republican National Committee or the Republican National Senatorial Committee to expend funds in support of Senator Robert Packwood.

(5) The method which I used to report the above expenditures by the Oregon Republican Party was my best effort to find an appropriate category for the type of expenditures involved. Because no coordination of the activity took place with the office of Senator Robert Packwood, I had no reason to believe that the expenditures could have been characterized by anyone as being expenditures coordinated with anyone else. The guidance provided by the Federal Election Commission in the spring of 1992 did not lead me to believe that the expenditures involved should have been reported as coordinated expenditures. I was not aware of Advisory Opinion 1984-15 which apparently has been issued by the Federal Election Commission.

(6) I have used my best efforts to report all matters known to me honestly and fully.

Signed and sworn this 22nd day of December, 1992.


Bert Farrish

93040960376

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

On this 22nd day of December, 1992, personally appeared before me the above named Bert Farrish, and acknowledged the foregoing instrument to be his voluntary act and deed.

Deborah Millsap

Notary Public for Oregon
My commission expires: 6/18/93

93040960377

FROM :

PHONE NO. : 284 2783

P02

Robeson Marketing Communications

5201 N.E. 35th Street • Portland, Oregon 97211

INVOICE

Date: March 30, 1992

Paid

To: Craig Berkman, Jim Whitfield
Oregon Republican Party
9900 S.W. Greenburg Road
Portland, Oregon 97223

Invoice Number: #92-305

For marketing and communications services through March 27, 1992 to complete the following projects.

Advertising Production and Placement

- Refine copy and concept, oversee production and placement of "Hey, Congressman AuCoin ad."

Professional fees

n/a*

Media Placements

The Oregonian (insertion order #92-100)

\$ 1,799.01

The Oregonian (insertion order #92-101)

8,524.32

Sub total

\$ 10,284.23

Less pre-payment

\$ 9,991.43

Total due

\$ 292.80

*Covered by placement commission

23040960378

FROM :

PHONE NO. : 284 2783

P03

Robeson Marketing Communications

5201 N.E. 35th Street • Portland, Oregon 97211

INVOICE

Date: March 30, 1992

To: Craig Berkman, Jim Whitfield
Oregon Republican Party
9900 S.W. Greenburg Road
Portland, Oregon 97223

*Credit
Applied
to
#92-305*

Invoice Number: #92-306

Credit for donation of commission from media placements in the Oregonian
(insertion orders #92-100 and 92-101).

Total credit \$ 292.80

23040960379

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE

Oregon Republican Party (Federal)

A. U.S. Bank	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
321 SW Sixth Ave Portland, OR 97204	<i>bank fee</i>	02/28/92	10.00

Disb. for:

B. Amy Nissen	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
9900 SW Greenburg Rd Suite 280 Portland, OR 97223	Postage/shipping	03/02/92	24.85

Disb. for:

C. U.S. Postmaster	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
Tigard or Main Branch Tigard, OR 97223	Postage/shipping	03/05/92	300.00

Disb. for:

D. The Madison Group	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
Nine Lake Bellevue Suite 217 Bellevue, WA 98005	Direct Mail/Fundraising	03/05/92	200.00

Disb. for:

E. Dorchester Conference	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
c/o Nancy Glerum 526 NW Marlborough Portland, OR 97210	Meeting Expense	03/05/92	50.00

Disb. for:

F. U.S. Bank	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
321 SW Sixth Ave Portland, OR 97204	Payroll Taxes	03/16/92	858.18

Disb. for:

G. Robeson Communications	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
5201 NE 35th Street Portland, OR 97211	Promotional Expense - <i>Generic Federal Candidate Support</i>	03/25/92	3841.43

Disb. for:

H. Robeson Communications	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
5201 NE 35th Street Portland, OR 97211	Promotional Expense - <i>Generic Federal Candidate Support</i>	03/27/92	1500.00

Disb. for:

I. Robeson Communications	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
5201 NE 35th Street Portland, OR 97211	Promotional Expense <i>Generic Federal Candidate Support</i>	03/27/92	1500.00 ✓

Disb. for:

SUBTOTAL

8284.46

ODM

3304096038

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE
Oregon Republican Party (Federal)

	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
A. Robeson Communications 5201 NE 35th Street Portland, OR 97211	Promotional Expense - <i>general federal candidate support</i> Disb. for:	03/27/92	1500.00 ✓
B. Robeson Communications 5201 NE 35th Street Portland, OR 97211	Promotional Expense - <i>general federal candidate support</i> Disb. for:	03/27/92	1500.00 ✓
C. Robeson Communications 5201 NE 35th Street Portland, OR 97211	Promotional Expense - <i>general federal candidate support</i> Disb. for:	03/27/92	150.00 ✓
D. U.S. Bank 321 SW Sixth Ave Portland, OR 97204	PURPOSE OF DISBURSEMENT <i>bank fee</i> Disb. for:	03/31/92	10.00

SUBTOTAL 3160.00

TOTAL This Period 17542.39

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To: Craig Berkman
From: Greg Robeson
Re: final campaign estimates
Date: May 11, 1992

CC: Candee M./Jim W.

The following is the final figure for costs incurred producing the "Hot Stuff" campaign. Let me know if you have any questions.

Radio spot placements

41,534.00

Radio spot distribution costs

250.00

Print Ad

2,121.25

Concept development, copywriting production
management, art direction, design,
initial illustration sketches

total

43,905.25

41,784.00

cop
Berkman

4-0011 EVI

ACCOUNT PAID 41,784.00
Date 5-12-92
Check No.
Acct. No. Ad
Paid By cm

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE

Oregon Republican Party (federal)

	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
A. Internal Revenue Service Ogden, UT	Payroll Taxes	04/09/92	774.71

Disb. for:

	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
B. U.S. Bank 321 SW Sixth Ave Portland, OR 97204	Payroll Taxes	04/15/92	831.64

Disb. for:

	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
C. Bert Farrish 4305 SW Tunnelwood Portland, OR 97221	Staff Expense	04/17/92	743.16

Disb. for:

	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
D. Second Congressional District 3527 Montevilla Drive Klamath Falls, OR 97603	Fund Transfers	04/29/92	441.69

Disb. for:

	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
E. U.S. Postmaster Tigard or Main Branch Tigard, OR 97223	Postage/shipping	05/06/92	400.00

Disb. for:

	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
F. Eaton Financial P.O. Box 9104 Framingham, MA 01701	Equipment Rental/Lease	05/06/92	940.00

Disb. for:

	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
G. James B. Whitfield 9900 SW Greenburg Rd Suite 280 Portland, OR 97223	Staff Expense	05/06/92	248.13

Disb. for:

	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
H. Robeson Communications 5201 NE 35th Street Portland, OR 97211	Pub Rel/Non-candidate	05/07/92	1550.00

Disb. for:

	PURPOSE OF DISBURSEMENT	DATE	AMOUNT
I. Robeson Communications 5201 NE 35th Street Portland, OR 97211	Consulting Expense/Advice	05/11/92	41784.00

Disb. for:

SUBTOTAL

47713.33

TOTAL This Period (Year to Date)

FROM :

PHONE NO. : 284 2783

P07

Robeson Marketing Communications

5201 N.E. 35th Street • Portland, Oregon 97211

INVOICE

Date: May 13, 1992

To: Craig Berkman, Jim Whitfield
Oregon Republican Party
9900 S.W. Greenburg Road
Portland, Oregon 97223

Invoice: #92-503

Paid

Print Ad

Fees

Copywriting, changes and editing,
project management, client contact,
media placements and cancellation.

n/c

Expenses

Art direction and design, concept
development, revisions
Research and initial sketches for illustration

\$1,475.25

\$ 650.00

Total expenses \$ 2,125.25

Radio Ad

Fees

Writing and editing of initial script, editing of
final script, production management, media buying
and placement coordination

n/c

Expenses

Media placements
Talent fees, studio production, dubbing
Distribution expenses, messengers,
long distance phone, postage, fax

\$41,534.00

1,216.32

135.77

Total expenses \$42,886.09

Total 45,007.34

Less payments (43,334.00)

Balance \$ 1,673.34

Credit from #92-504 1,673.34

93040960384

MARK W. EVES
RONALD L. WADE

EVES & WADE
ATTORNEYS AT LAW
SUITE 200
3236 S.W. KELLY AVENUE
PORTLAND, OREGON 97201-4679
(503) 227-6226
FAX (503) 227-4971

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COMMISSION
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OF COUNSEL
FRANCIS I. SMITH
(503) 227-5080

December 30, 1992

VIA FAX NO. (202) 219-3923

Mr. Tony Buckley
Staff Attorney
Federal Election Commission
Washington, DC 20463

RE: MUR 3524, Oregon Republican Party and Bert Farrish, as
Treasurer

Dear Mr. Buckley:

Enclosed is a copy of a fax message recently received from Robeson Marketing Communications. The fax letter responds to the questions raised by you, namely the dates at which the print advertising was run, and an explanation of the credit against the account.

We also would like to clarify our letter to you dated December 23, 1992. The total amounts paid by the Oregon Republican Party to Robeson Marketing Communications in connection with the Representative AuCoin matters totalled \$53,325.43. If the credit on the account of \$1,673.34 is added, the total expenditures will equal \$54,998.77. The \$45,007.34 which was set forth in our prior letter to you did not include the \$9,991.43 paid in late March of 1992. As you know, we sent you all of the invoices, including the one for \$9,991.43. In my haste to get the letter to you, I forgot to add the earlier \$9,991.43 in my letter.

Please confirm your receipt of this letter and the enclosure as quickly as possible.

Sincerely,


Mark W. Eves

MWE:dmm
Enclosure
cc: Oregon Republican Party
Regular mail

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Robeson Marketing Communications

5201 N.E. 35th Street • Portland, Oregon 97211

To: Candee Mumm
From: Greg Robeson
Re: Break down of media purchases
Date: December 29, 1992

As you requested, I've listed the newspapers where the "Hey, Congressman AuCoin" print ad was placed.

The Oregonian	Thursday, March 26, 1992	\$1,759.91
The Oregonian	Sunday, March 29, 1992	\$8,524.32

In addition, the following is a recap of the credit applied from invoice #92-504 to invoice #92-503:

When the party prepaid the media and hard cost expenses (invoice #92-503) for the "Hot Stuff" radio campaign, there was a shortage of \$1,673.34.

Coinciding with the "Hot Stuff" campaign was a radio schedule encouraging Independent voters to take party in Oregon's Republican primary election (invoice #92-504).

To recoup the shortage, the party was billed an additional \$1,673.34 on invoice #92-504 and the amount was credited to invoice #92-503 to create a zero balance due.

Post-It [®] brand fax transmittal memo 7671		# of pages • 1
To <i>WIC-10 EVES</i>	From <i>Greg Robeson</i>	
Co.	Co.	
Dept.	Phone #	
Fax #	Fax #	

EVES & WADE
ATTORNEYS AT LAW

SUITE 200
3236 S.W. KELLY AVENUE
PORTLAND, OREGON 97201-4679
(503) 227-6226
FAX (503) 227-4971

MARK W. EVES
RONALD L. WADE

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FEDERAL ELECTION
COMMISSION
MAIN COPY ROOM

JAN 4 11 11 AM '93

OF COUNSEL
FRANCIS I. SMITH
(503) 227-5680

December 31, 1992

VIA FAX NO. (202) 219-3923

Mr. Tony Buckley
Staff Attorney
Federal Election Commission
Washington, DC 20463

RE: MUR 3524, Oregon Republican Party and Bert Farrish, as
Treasurer

Dear Mr. Buckley:

Pursuant to your inquiry on December 30, 1992, we have looked into the matter of the credit on the account of \$1,673.34. In turn, the Oregon Republican Party inquired with the vendor, Robeson Marketing Communications. As a result of the inquiry, we have discovered that the vendor made an error. Upon discovery of the error, the vendor immediately took corrective action.

Enclosed with this letter is a letter from Greg Robeson to the Oregon Republican Party dated December 30, 1992. In that letter, Mr. Robeson apologizes for improperly billing the Oregon Republican Party. He has refunded \$1,673.34 to the Oregon Republican Party. That amount will be put back into the state account, and the reports to the Federal Election Commission will be revised to reflect that \$1,673.34 remains owing to Robeson Marketing Communications.

Invoice 92-504 referred to in the enclosed letter was paid from the state account of the Oregon Republican Party, and not from the federal account. Funds permitting, the federal account will pay the outstanding \$1,673.34 to Robeson Marketing Communications.

We hope that this clears up the confusion regarding the credit. Until you inquired about it, no one had noticed that the credit was given. No monies were disbursed from the state account of the Oregon Republican Party for the purpose of affecting any Federal race. An error was made by the vendor, which now has been corrected.

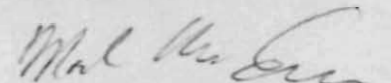
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COMMISSION
JAN -4 PM 1:39

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Mr. Tony Buckley
Staff Attorney
Federal Election Commission
December 31, 1992
Page 2

If you have any questions or comments concerning this
matter, please feel free to contact us.

Sincerely,


Mark W. Eves

MWE:dmm
Enclosure
cc: Oregon Republican Party
Regular mail

93040960388

Robeson Marketing Communications

350 E. 35th Street • Portland, Oregon 97214

December 30, 1992

Ms. Candee Munum
Oregon Republican Party
9900 S.W. Greenburg Road
Portland, Oregon 97223

Candee,

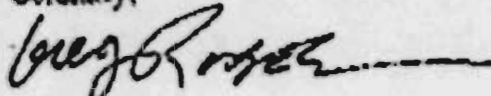
I've attached a revised copies of invoices #92-503 and #92-504, originally dated May 13, 1992.

As we have discussed, I overbilled you \$1,673.34 on invoice #92-504 to cover the outstanding balance on invoice #92-503. I did not realize that these expenditures were to come from mutually exclusive accounts and apologize for any confusion it may have caused.

I have enclosed a check in the amount of \$1,673.34 to be replaced to the proper account.

Please let me know if you have any questions. Again, I apologize for the confusion.

Cordially,



Greg Robeson

93040960389

INVOICE

Date: December 30, 1992

To: Craig Berkman, Jim Whitfield
Oregon Republican Party
9900 S.W. Greenburg Road
Portland, Oregon 97223

Invoice: #92-503

Print Ad

Fees

n/c

Copywriting, changes and editing,
project management, client contact,
media placements and cancellation.

Expenses

Art direction and design, concept
development, revisions

\$1,475.25

Research and initial sketches for illustration

\$ 650.00

Total expenses \$ 2,125.25

Radio Ad

Fees

n/c

Writing and editing of initial script, editing of
final script, production management, media
buying and placement coordination

Expenses

Media Placements

\$41,534.00

Talent fees, studio production, dubbing

1,216.32

Distribution expenses, messengers,
long distance phone, postage, fax

135.77

Total expenses \$42,886.09

Total 45,007.34

Less Payments (43,334.00)

Balance due \$ 1,673.34

93040960390

RECEIVED
F.E.C.
SECRETARIAT

93 JAN -8 AM 11:31

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Oregon Republican Party and) MUR 3524
Bert Farrish, as treasurer)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On May 15, 1992, the Democratic Senatorial Campaign Committee filed a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by the Oregon Republican Party (the "Party"). The complaint alleged that the Party had failed to properly report expenses associated with certain communications critical of Representative Les AuCoin.

On December 1, 1992, the Commission found reason to believe that the Oregon Republican Party and Bert Farrish, as treasurer, violated 2 U.S.C. § 434(b)(6)(B)(iv) by failing to report the costs associated with these communications as coordinated campaign expenditures pursuant to 2 U.S.C. § 441a(d)(3). On December 18, 1992, counsel for Respondents faxed a request to enter into pre-probable cause conciliation to this Office. Attachment 1. In a prior telephone conversation, counsel had informed this Office that the anticipated change in the Party's leadership made it important from their standpoint that this matter be resolved as soon as possible.

In an effort to be able to resolve this matter expeditiously, this Office requested certain information from Respondents.

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First, this Office requested that Respondents identify where disbursements associated with the communications appeared on reports already filed with the Commission. This Office also requested copies of all invoices associated with these communications from Robeson Marketing Communications, the firm responsible for the Party's effort against Rep. Aucoin. Respondents complied with these requests. Attachment 2.

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A review of these materials, however, raised additional questions. First, the invoice relating to the newspaper ads noted an outstanding balance of \$292.80 (Attachment 2, page 5). Another invoice (Attachment 2, page 6) noted that this same amount is a "[c]redit for donation of commission from media placements in the Oregonian." Counsel has explained that essentially, Robeson Marketing Communications ("Robeson") forgave the remaining \$292.80 of the bill. Thus, it appears that Robeson made a contribution in the amount of \$292.80 to the Oregon Republican Party. As this Office has confirmed with the Corporations Division of the Oregon Office of the Secretary of State that Robeson is not incorporated, it appears that the Oregon Republican Party violated 2 U.S.C. § 434 by failing to report this in-kind contribution from Robeson.

A second question has to do with the complete payment of invoices relating to the radio ad. An invoice dated May 13, 1992 shows a balance owed of \$1,673.34. Counsel has explained that because the invoice for the radio ads was underpaid in advance by this amount, this amount was added to another invoice for a radio schedule encouraging independent voters to take part in Oregon's Republican primary election. This account is confirmed by a

memorandum dated December 29, 1992 and a letter dated December 30, 1992, both of which were apparently issued by Robeson at the request of the Party's counsel. Attachments 3 and 4.

Because no other payment to Robeson could be located on the Party's federal reports, it appeared that state funds may have been used to pay for this second invoice, and thus to pay for a portion of the radio ad critical of Congressman AuCoin. Counsel for the Party has confirmed that this second invoice was paid for in its entirety with funds from its state account. Because Oregon law allows state political committees to accept corporate and union funds, it thus appears that illegal funds, in the amount of \$1,673.34, were used in connection with a federal election.

In telephone conversations with counsel on December 29, 30, and 31, 1992, staff of this Office explained that it appeared that additional violations of the Act may have occurred based on the information provided. On January 4, 1993, counsel informed this Office that he wished the previous request for pre-probable cause conciliation to extend to any additional violations as well.

II. ANALYSIS

Pursuant to 2 U.S.C. § 434(a)(1), each treasurer of a political committee shall file reports of the receipts and disbursements of that committee. Each such report shall disclose the identification of every person who makes a contribution when that contribution is in excess of \$200 within the calendar year, together with the date and amount of any such contribution. See 2 U.S.C. § 434(b)(3)(A). The term contribution includes the provision of any service at a charge that is less than the usual

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and normal charge. See 11 C.F.R. § 100.7(a)(1)(iii)(A). If a service is provided at less than the usual and normal charge, the amount of the contribution is the difference between the usual and normal charge for the service at the time of the contribution and the amount charged to the political committee. Id.

Pursuant to 2 U.S.C. § 441b(a), it is unlawful to use corporate or labor union monies in connection with a federal election. Pursuant to 11 C.F.R. § 102.5(a)(1)(i), a political committee must establish a separate federal account, and must make all disbursements, contributions, expenditures and transfers in connection with a federal election from this account.

The Party contracted with Robeson to provide certain services in connection with radio and newspaper ads critical of Congressman Les AuCoin. These services were invoiced separately, and it appears that the Party paid for these services in advance. With respect to the newspaper ads, the Party pre-paid \$9,991.43 of a final bill of \$10,284.23. Subsequently, Robeson forgave the remaining \$292.80.

Because the bill for services appears to represent the usual and normal charge for these services, the forgiveness of the remaining amount resulted in a contribution to the Party. No such contribution has been reported by the Party. Accordingly, this Office recommends that the Commission find reason to believe that the the Oregon Republican Party and Bert Farrish, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

With respect to the invoice for the radio ads, the Party

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pre-paid \$43,334 of a final bill of \$45,007.34. Subsequently, Robeson credited excess funds from a third invoice which the Party had pre-paid. The monies toward this third invoice came from the Party's state account. Under Oregon law, political committees may accept contributions from corporations and labor unions. By allowing Robeson to use funds paid from its state account to offset amounts due on the AuCoin ads, the Party has effectively made an expenditure from its state account in connection with a federal election. Moreover, as the state account may have contained corporate and labor union monies, their use in connection with the AuCoin ads would constitute a violation of section 441b(a). See, e.g., MUR 2998. Accordingly, this Office recommends that the Commission find reason to believe that Oregon Republican Party and Bert Farrish, as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(a)(1)(i).

III. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY

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IV. RECOMMENDATIONS

1. Find reason to believe that the the Oregon Republican Party and Bert Farrish, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(A) and 441b(a), and 11 C.F.R. § 102.5(a)(1)(i).
2. Enter into conciliation with the Oregon Republican Party and Bert Farrish, as treasurer, prior to findings of probable cause to believe.
3. Approve the attached Factual and Legal Analysis and conciliation agreement, and the appropriate letter.

Lawrence M. Noble
General Counsel

Date

1/6/93

BY:


Lois G. Lerner
Associate General Counsel

Attachments

1. Request for conciliation
2. Response to First Request
3. Explanation of Radio Ad Payment
4. Additional explanation of Radio Ad Payment
5. Factual And Legal Analysis
6. Proposed Conciliation Agreement

Staff assigned: Tony Buckley

93040960398

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Oregon Republican Party and) MUR 3524
Bert Farrish, as treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 13, 1993, the Commission decided by a vote of 4-2 to take the following actions in MUR 3524:

1. Find reason to believe that the Oregon Republican Party and Bert Farrish, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(A) and 441b(a), and 11 C.F.R. § 102.5(a)(1)(i).
2. Enter into conciliation with the Oregon Republican Party and Bert Farrish, as treasurer, prior to findings of probable cause to believe.

(Continued)

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3. Approve the Factual and Legal Analysis and conciliation agreement, and the appropriate letter, as recommended in the General Counsel's Report dated January 6, 1993.

Commissioners McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioners Aikens and Elliott dissented.

Attest:

1-13-93
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat:	Fri., Jan. 8, 1993 11:31 a.m.
Circulated to the Commission:	Fri., Jan. 8, 1993 12:00 p.m.
Deadline for vote:	Wed., Jan. 13, 1993 4:00 p.m.

dr

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 14, 1993

BY FEDERAL EXPRESS

Mark W. Eves, Esq.
Eves & Wade
Suite 200
3236 S.W. Kelly Avenue
Portland, Oregon 97201-4679

RE: MUR 3524

Oregon Republican Party and
Bert Farrish, as treasurer

Dear Mr. Eves:

On December 1, 1992, the Federal Election Commission found reason to believe that your clients, the Oregon Republican Party and Bert Farrish, as treasurer, violated 2 U.S.C. § 434(b)(6)(B)(iv). You were notified of this finding on December 11, 1992.

Upon reviewing additional information supplied by you and your clients, the Commission, on January 13, 1993, found that there is also reason to believe the Oregon Republican Party and Bert Farrish, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(A) and 441b(a), and 11 C.F.R. § 102.5(a)(1)(i). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. Also on January 13, 1993, the Commission, at your request, determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of all aspects of this matter prior to findings of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If your clients agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of

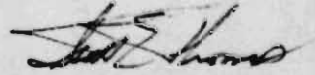
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Mark W. Eves, Esq.
MUR 3524
Page 2

the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

If you have any questions, please contact Tony Buckley, the attorney assigned to this matter, at (202) 219-3590.

Sincerely,



Scott E. Thomas
Chairman

Enclosures
Factual and Legal Analysis
Conciliation Agreement

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Oregon Republican Party and
Bert Farrish, as treasurer

MUR 3524

On December 1, 1992, the Federal Election Commission ("Commission") found reason to believe that the Oregon Republican Party ("the Party") and Bert Farrish, as treasurer ("Respondents"), violated 2 U.S.C. § 434(b)(6)(B)(iv) by failing to report the costs associated with certain communications as coordinated campaign expenditures pursuant to 2 U.S.C. § 441a(d)(3). On December 18, 1992, counsel for Respondents faxed a request to enter into pre-probable cause conciliation. In an effort to resolve the matter, the Office of the General Counsel requested certain information from Respondents and Respondents complied with these requests. A review of these materials, however, raised additional reason to believe findings described below. On January 4, 1993, counsel informed the Commission that he wished the previous request for pre-probable cause conciliation to extend to any additional violations as well.

Pursuant to 2 U.S.C. § 434(a)(1), each treasurer of a political committee shall file reports of the receipts and disbursements of that committee. Each such report shall disclose the identification of every person who makes a contribution when that contribution is in excess of \$200 within the calendar year, together with the date and amount of any such contribution. See

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2 U.S.C. § 434(b)(3)(A). The term contribution includes the provision of any service at a charge that is less than the usual and normal charge. See 11 C.F.R. § 100.7(a)(1)(iii)(A). If a service is provided at less than the usual and normal charge, the amount of the contribution is the difference between the usual and normal charge for the service at the time of the contribution and the amount charged to the political committee. Id.

Pursuant to 2 U.S.C. § 441b(a), it is unlawful to use corporate or labor union monies in connection with a federal election. Pursuant to 11 C.F.R. § 102.5(a)(1)(i), a political committee must establish a separate federal account, and must make all disbursements, contributions, expenditures and transfers in connection with a federal election from this account.

The Party contracted with Robeson Marketing Communications ("Robeson") to provide certain services in connection with radio and newspaper ads critical of Congressman Les AuCoin. These services were invoiced separately, and it appears that the Party paid for these services in advance. With respect to the newspaper ads, the Party pre-paid \$9,991.43 of a final bill of \$10,284.23. Subsequently, Robeson forgave the remaining \$292.80.

Because the bill for services appears to represent the usual and normal charge for these services, the forgiveness of the remaining amount resulted in a contribution to the Party. No such contribution has been reported by the Party. Accordingly, there is reason to believe that the the Oregon Republican Party and Bert Farrish, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

With respect to the invoice for the radio ads, the Party

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pre-paid \$43,334 of a final bill of \$45,007.34. Subsequently, Robeson credited excess funds from a third invoice which the Party had pre-paid. The monies toward this third invoice came from the Party's state account. Under Oregon law, political committees may accept contributions from corporations and labor unions. By allowing Robeson to use funds paid from its state account to offset amounts due on the AuCoin ads, the Party has effectively made an expenditure from its state account in connection with a federal election. Moreover, as the state account may have contained corporate and labor union monies, their use in connection with the AuCoin ads would constitute a violation of section 441b(a). See, e.g., MUR 2998. Accordingly, there is reason to believe that Oregon Republican Party and Bert Farrish, as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(a)(1)(i).

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BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of)
Oregon Republican Party and) MUR 3524
Craig C. Brenton, as treasurer)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On December 1, 1992, the Commission found reason to believe that the Oregon Republican Party ("the Party") and Bert Farrish, as treasurer, violated 2 U.S.C. § 434(b)(6)(B)(iv) by failing to report the costs associated with certain communications as coordinated campaign expenditures pursuant to 2 U.S.C. § 441a(d)(3). On December 18, 1992, counsel for Respondents faxed a request to enter into pre-probable cause conciliation to this Office. In an effort to be able to resolve this matter expeditiously, this Office requested certain information from Respondents. Respondents complied with these requests.

A review of these materials raised additional questions. In telephone conversations with counsel on December 29, 30 and 31, 1992, staff of this Office explained that, based on the information provided, it appeared that additional violations of the Act may have occurred. On January 4, 1993, counsel informed this Office that he wished the previous request for pre-probable cause conciliation to extend to any additional violations as well.

On January 13, 1993, the Commission found reason to believe that the Oregon Republican Party and Bert Farrish, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(A) and 441b(a), and 11 C.F.R.

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§ 102.5(a)(1)(i). Also on that date, the Commission agreed to enter into conciliation with Respondents and approved an agreement in settlement of this matter. Attached is a signed conciliation agreement which this Office recommends the Commission accept in resolution of this matter. Attachment 1.

II. ANALYSIS

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III. RECOMMENDATIONS

1. Accept the attached conciliation agreement.
2. Approve the appropriate letter.
3. Close the file.

Lawrence M. Noble
General Counsel

Date 8/17/93

BY: 
Lois G. Lerner
Associate General Counsel

Attachments

1. Modified Conciliation Agreement
2. February 22, 1993 Letter from Counsel
3. June 25, 1993 Letter from Counsel

Staff Assigned: Tony Buckley



FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS 
COMMISSION SECRETARY

DATE: AUGUST 20, 1993

SUBJECT: MUR 3524 - GENERAL COUNSEL'S REPORT
DATED AUGUST 17, 1993.

The above-captioned document was circulated to the
Commission on Tuesday, August 17, 1993 at 4:00 p.m.

Objection(s) have been received from the
Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	<u>XXX</u>	} FOR THE RECORD ONLY.
Commissioner Elliott	<u>XXX</u>	
Commissioner McDonald	<u> </u>	
Commissioner McGarry	<u> </u>	
Commissioner Potter	<u>XXX</u>	
Commissioner Thomas	<u> </u>	

This matter will be placed on the meeting agenda
for Tuesday, September 14, 1993.

Please notify us who will represent your Division before
the Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Oregon Republican Party and) MUR 3524
Craig C. Brenton, as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on September 14, 1993, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions in MUR 3524:

1. Accept the conciliation agreement attached to the General Counsel's report dated August 17, 1993.
2. Approve the appropriate letter as recommended in the General Counsel's report dated August 17, 1993.
3. Close the file.

Commissioners McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioners Aikens and Elliott dissented.

Attest:

9-15-93
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 24, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Judith L. Corley, Esq.
Perkins Cole
607 14th Street, N.W.
Washington, D.C. 20005-2011

RE: MUR 3524

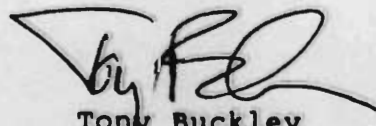
Dear Ms. Corley:

This is in reference to the complaint you filed on behalf of the Democratic Senatorial Campaign Committee with the Federal Election Commission on May 15, 1992, concerning certain activity by the Oregon Republican Party.

The Commission found that there was reason to believe the Oregon Republican Party and its treasurer violated 2 U.S.C. § 434(b)(6)(B)(iv), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and conducted an investigation in this matter. Subsequently, the Commission also found that there was reason to believe the respondents violated 2 U.S.C. § 434(b)(3)(A) and 441b(a), and 11 C.F.R. § 102.5(a)(1)(i). On September 14, 1993, a conciliation agreement signed by the respondents was accepted by the Commission. Accordingly, the Commission closed the file in this matter. A copy of this agreement is enclosed for your information. Enclosed you will also find a Statement of Reasons from one Commissioner explaining his vote. This document will be placed on the public record as part of the file of MUR 3524.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,


Tony Buckley
Attorney

Enclosures
Conciliation Agreement
Statement of Reasons

23040960414



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

September 24, 1993

Geoffrey D. Brown, Treasurer
Re-Elect Packwood Committee
5301 Wisconsin Avenue, N.W.
Washington, D.C. 20015

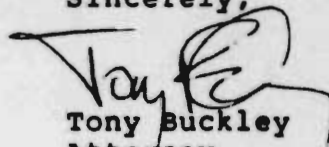
RE: MUR 3524

Dear Mr. Brown:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,


Tony Buckley
Attorney

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 24, 1993

Mark W. Eves, Esq.
Eves & Wade
3236 S.W. Kelly Avenue
Suite 200
Portland, Oregon 97201-4679

RE: MUR 3524
Oregon Republican Party and
Craig C. Brenton, treasurer

Dear Mr. Eves:

On September 15, 1993, the Federal Election Commission accepted the signed conciliation agreement submitted on behalf of your clients, Oregon Republican Party and Craig C. Brenton, its treasurer, in settlement of violations of 2 U.S.C. §§ 434(b)(3)(A), 434(b)(6)(B)(iv) and 441b(a), and 11 C.F.R. § 102.5(a)(1)(i), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and the Commission's regulations. Accordingly, the file has been closed in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the first installment payment on the civil penalty is due within 60 days of

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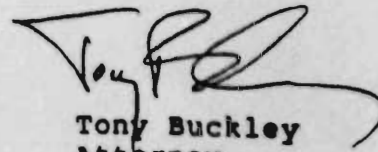
Mark W. Eves, Esq.
MUR 3524
Page 2

the conciliation agreement's effective date. Amendments to reports must be filed within 30 days of the conciliation agreement's effective date.

Enclosed you will also find a Statement of Reasons from one Commissioner explaining his vote. This document will be placed on the public record as part of the file of MUR 3524.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,



Tony Buckley
Attorney

Enclosures
Conciliation Agreement
Statement of Reasons

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Oregon Republican Party and) MUR 3524
Craig C. Brenton, treasurer)

CONCILIATION AGREEMENT

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This matter was initiated by a signed, sworn, and notarized complaint by the Democratic Senatorial Campaign Committee. The Federal Election Commission ("Commission") found reason to believe that the Oregon Republican Party and its then-treasurer, Bert Farrish, violated 2 U.S.C. §§ 434(b)(3)(A), 434(b)(6)(B)(iv) and 441b(a); and 11 C.F.R. § 102.5(a)(1)(i).

NOW, THEREFORE, the Commission and the Oregon Republican Party and its current treasurer, Craig C. Brenton ("Respondents"), having participated in informal methods of conciliation, prior to findings of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. The Oregon Republican Party is a State committee within the meaning of 2 U.S.C. § 431(15).

2. Craig C. Brenton is the treasurer of the Oregon Republican Party. Neither Craig C. Brenton nor any other current officer of the Oregon Republican Party was an officer of the Party at the time the events which are the subject of this agreement took place.

3. Senator Robert Packwood was the presumptive candidate of the Oregon Republican Party for the 1992 Oregon general election for the U.S. Senate at the time of the events in this matter.

4. At the time of the events in this matter, Representative Les AuCoin and businessman Harry Lonsdale were running in the Democratic primary election to be that party's U.S. Senate candidate in the 1992 Oregon general election.

5. Robeson Marketing Communications is an unincorporated business which provided services relating to the production and placement of the newspaper and radio ads which are the subject of this matter.

6. Pursuant to 2 U.S.C. § 441a(d)(3), a State committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for the office of Senator who is affiliated with that party, which exceeds the greater of two cents multiplied by the voting age population of the State, or \$20,000. For the 1992 election cycle, the State committee in Oregon was allowed to spend up to \$120,091.76 on such expenditures for its candidate. See FEC Record, Volume 18, Number 3 (March 1992).

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7. A State committee such as the Party must report such expenditures, known as coordinated campaign expenditures, separately. See 11 C.F.R. § 104.3(b)(1)(viii). A party does not have to consult or coordinate with the candidate for a coordinated campaign expenditure to occur. See Advisory Opinion 1984-15.

8. In reporting coordinated campaign expenditures, a committee must include the name of the person receiving such expenditures; the date, amount and purpose of such expenditures; and the name of, and office sought by, the candidate on whose behalf the expenditure is made. See 2 U.S.C. § 434(b)(6)(B)(iv).

9. A communication is considered to be "in connection with a general election," and thus a coordinated campaign expenditure, where it both depicts a clearly identified candidate and conveys an electioneering message. See Advisory Opinion 1984-15.

10. Every report filed by a committee shall disclose the identification of every person who makes a contribution when that contribution is in excess of \$200 within the calendar year, together with the date and amount of any such contribution. See 2 U.S.C. § 434(b)(3)(A). The term contribution includes the provision of any service at a charge that is less than the usual and normal charge. See 11 C.F.R. § 100.7(a)(1)(iii)(A). If a service is provided at less than the usual and normal charge, the amount of the contribution is the difference between the usual and normal charge for the service at the time of the contribution and the amount charged to the political committee. Id.

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11. Pursuant to 2 U.S.C. § 441b(a), it is unlawful to use corporate or labor union monies in connection with a federal election. Oregon law allows a state political committee to accept contributions from corporations and labor unions.

12. Pursuant to 11 C.F.R. § 102.5(a)(1)(i), a political committee must establish a separate federal account, and must make all disbursements, contributions, expenditures and transfers in connection with a federal election from this account.

13. On March 26 and 29, 1992, the Oregon Republican Party, without consulting or coordinating with Senator Packwood, ran a newspaper ad in The Oregonian which criticized Representative AuCoin for bouncing checks at the bank at the U.S. House of Representatives. The ad clearly identified Representative AuCoin, and suggested that, because of his involvement with the House Bank, he was out of touch with the voters of Oregon. As a result, the newspaper ad sought to diminish Representative AuCoin's support in the primary election. The cost of production and placement of this ad totalled \$12,409.48.

14. In the week preceding the May 19th primary election, the Oregon Republican Party, without consulting or coordinating with Senator Packwood, broadcast a radio ad which also criticized Representative AuCoin for bouncing checks at the House Bank. The radio ad clearly identified Representative AuCoin, and suggested that he was lying to the voters of Oregon regarding his involvement with the House Bank. The Oregon Republican Party spent \$42,886.09 on the production and broadcast of this ad.

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15. The newspaper and radio ads were intended to help Senator Packwood in the general election either by helping to defeat Representative AuCoin in the Democratic primary election and enabling Senator Packwood to face a perceived weaker candidate in the general election, or helping to weaken Les AuCoin for the general election contest against Senator Packwood.

16. Costs associated with the radio and newspaper ads were coordinated campaign expenditures by the Oregon Republican Party on behalf of Senator Robert Packwood.

17. Respondents did not identify costs associated with the ads as being made to advance Senator Packwood's general election effort; rather, Respondents reported most of these costs generically as "Other Federal Operating Expenditures."

18. The Oregon Republican Party pre-paid Robeson Marketing Communications \$9,991.73 for the media placements for the newspaper ad. The first of two invoices for the newspaper ad totaled \$292.80 more than the Party had pre-paid. Robeson forgave the \$292.80 rather than requiring payment by the Party.

19. Respondents did not report this in-kind contribution by Robeson Marketing Communications.

20. The Oregon Republican Party pre-paid Robeson Marketing Communications \$43,334.00 for the remaining fees and expenses for the newspaper ad and for all fees and expenses relating to the radio ads. When the actual bill came to more than \$45,000, Robeson drew upon funds previously paid to it from the Oregon Republican Party's non-federal account for payment of the balance of approximately \$1,670.

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21. The Oregon Republican Party contends that Robeson applied the funds previously paid from the party's non-federal account without the consent of the Party. However, until notified of an apparent violation by Commission staff some seven months later, the Party did not seek reimbursement of any of the amounts applied from its non-federal account and did not begin its efforts to satisfy the remainder of the bill with clean funds from its federal account.

V. 1. Respondents failed to properly report costs of more than \$55,000 associated with the radio and newspaper ads critical of Les AuCoin, in violation of 2 U.S.C. § 434(b)(6)(B)(iv).

2. Respondents failed to report receipt of an in-kind contribution from Robeson Marketing Communications, in violation of 2 U.S.C. § 434(b)(3)(A).

3. Respondents used funds prohibited by the Act to pay part of the costs at issue in this matter, in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(a)(1)(i).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Ten Thousand dollars (\$10,000), pursuant to 2 U.S.C. § 437g(a)(5)(A), such penalty to be paid as follows:

1. One initial payment of \$1,000 due sixty days from the effective date of this agreement;

2. Thereafter, nine consecutive monthly installment payments of \$1,000 each;

3. Each such installment shall be paid thirty days from the date of the previous installment;

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4. In the event that any installment payment is not received by the Commission within five days of the date it becomes due, the Commission may, at its discretion, accelerate the remaining payments and cause the entire amount to become due upon ten days written notice to the respondents. Failure by the Commission to accelerate the payments with regard to any overdue installment shall not be construed as a waiver of its right to do so with regard to future overdue installments.

5. Respondents will amend their reports on file with the Commission to accurately report all the expenditures (including the in-kind contribution) for the radio and television ads as Section 441a(d) expenditures.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the

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requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

BY:

[Signature]
Lois G. Lerner
Associate General Counsel

September 24, 1993
Date

FOR THE RESPONDENTS:

Craig Brantner
(Name)
(Position) Treasurer

July 22, 1993
Date

93040960425



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

In the Matter of

Oregon Republican Party and
Craig C. Brenton, as treasurer

)
)
)
)
)

MUR 3524

STATEMENT OF REASONS
Vice Chairman Potter

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This matter again raises for the Commission the important question of what speech is subject to our regulation, and thus what speech must be reported or is subject to the limits or prohibitions of the federal election laws. The Supreme Court has stated that generally a communication must expressly advocate the election or defeat of a federal candidate before it is considered to be "in connection with an election" and therefore regulated by the Commission. That Court, and lower courts subsequently elaborating, have attempted to define such "express advocacy." Meanwhile, in Advisory Opinion 1984-15 the Commission established a test for party coordinated expenditures requiring that they be "made for the purpose of influencing the outcome of the general election." Id. (emphasis added). Having not been a part of the Commission's discussion of that Advisory Opinion, I find some tension between the Commission's standard expressed in AO 1984-15 and the various court holdings defining when communications constitute expenditures subject to our regulation.

However, based on applicable Commission precedents, I voted to open an investigation in this matter because the complaint included contemporaneous newspaper accounts of public statements quoting the Chairman of the Oregon Republican Party as stating that the communication expenditures involved were intended to assist his party's general election nominee. With such a statement on the record, whether or not accurately quoted, I believed the relatively low threshold to open an investigation and gather further information had been met.

The Respondent in this case has now come to the Commission with a signed conciliation agreement in which Respondents specifically admit: (1) that they "intended to help Senator Packwood in the general election" (Clause 15); (2) that the "[c]osts associated with the radio and newspaper ads were coordinated campaign expenditures by the Oregon Republican Party on behalf of Senator Robert Packwood" (Clause 16) and (3) that as such those expenditures were not reported correctly

(Clause 17). Respondents are admitting to the Commission in a signed conciliation agreement that they violated the Federal Election Campaign Act of 1971, as amended ("the Act"). Respondents explicitly admit to failing to report the expenditures as they now claim they should have been reported. As noted, I am concerned with the disparity between the legal standard of AO 1984-15 and that developed by the Courts. However, I do not believe that as a Commissioner I have the authority to reject an admission presented by a Respondent party committee if the reason for rejection would be that the Respondents need not, in my opinion, have admitted a violation of the election laws. In light of the agreement presented by Respondent, it is irrelevant whether I think these communication expenditures must be treated as coordinated party expenditures. Respondents have chosen to make their admissions, and have characterized their previously filed reports as incorrect. In light of their decision, and their offer to pay the appropriate penalty, I believe the Commission is obligated to accept their characterization.

I recognize the unusual circumstances of the Respondents in this matter. Specifically, the record and the conciliation agreement indicate that those persons responsible for the expenditures in this matter are no longer in office. Instead, they have been replaced by new persons, apparently uninvolved in these expenditures, who are willing to admit to violations by their predecessors. There is no evidence in the record that the predecessors have reviewed this agreement or concur with its admissions. However, this result is necessary given the operation of associational and Commission legal doctrines. Specifically, as a matter of law we presume that committees are on-going entities and that their currently legally constituted officers can bind those committees when conciliating with the Commission, even when the conciliation agreement involves the actions of previous officers and agents of the Committee.

This case, coming within days of the decision of the U.S. District Court for the District of Colorado, FEC v. Colorado Republican Federal Campaign Committee, et al., (Civil Action No. 89-N-1159), again demonstrates the urgency of the Commission's effort to establish a clear standard for when a communication is regulated by the Commission in that it "expressly advocates the election or defeat of a candidate for federal office." Accordingly, I hope the Commission will redouble its efforts to clarify its standards in this very difficult and important area in a way that gives candidates, party committees, and others, some guidance.


Trevor Potter
Vice Chairman

September 15, 1993

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3524

DATE FILMED 9/28/93 CAMERA NO. 4

CAMERAMAN E.E.S.

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