



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3837

DATE FILMED 7-26-96 CAMERA NO. 2

CAMERAMAN MJS

96043735130

REPORTS ANALYSIS REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: August 30, 1993

ANALYST: TODD SCHUMACHER

I. COMMITTEE: Alice Gilbert for Congress
(C00269167)
Lori Brode Garon, Treasurer
255 East Brown, Suite 110
Birmingham, MI 48009

II. RELEVANT STATUTE: 2 U.S.C. §434(a)(6)
11 CFR §104.5(f)

III. BACKGROUND:

Failure to File Forty-Eight Hour Notifications

The Alice Gilbert for Congress committee ("the Committee") has failed to file two (2) 48-Hour Notifications ("48-Hour Notices") for candidate loans totalling \$125,000 which represents 100% of the candidate's loans requiring 48-Hour Notifications prior to the 1992 Primary Election.

The candidate was involved in the 1992 Primary Election held on August 4, 1992. Prior Notice was sent to the Committee on June 29, 1992 (Attachment 2). The Notice includes a section titled "48 Hour Notices on Contributions". This section reads "Notices are required if the committee receives contributions (including contributions and loans from the candidate's personal funds; and endorsements or guarantees of bank loans) of \$1,000 or more, during the period of July 16 through August 1. The notices must reach the appropriate federal and state filing offices within 48 hours of the committee's receipt of the contribution(s)."

Schedule C of the October Quarterly Report indicates that the Committee failed to file two (2) 48-Hour Notices for candidate loans received during the aforementioned period (Attachment 3). The following is a list of the candidate loans for which no 48-Hour Notices were filed:

<u>Contributor Name</u>	<u>Date</u>	<u>Amount</u>
Alice Gilbert (personal funds)	7/16/92	\$100,000
Alice Gilbert (personal funds)	7/29/92	\$ 25,000

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On April 13, 1993, a Request for Additional Information ("RFAI") was sent to the Committee (Attachment 4). The RFAI notes on an informational basis that the Committee may have failed to file one or more of the required 48-Hour Notices for "last minute" contributions of \$1,000 or more. The notice requests the Committee to review their procedures for checking contributions received during the aforementioned time period. In addition, the notice states that although the Commission may take legal steps, any response would be taken into consideration.

The Committee's response of July 23, 1993 does not address the matter in question.

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CANDIDATE/COMMITTEE/DOCUMENT	RECEIPTS		DISBURSEMENTS		COVERAGE DATES	# OF PAGES	MICROFILM LOCATION
	OFFICE SOUGHT/	PARTY	PRIMARY	GENERAL			
	TYPE OF FILER						

GILBERT, ALICE L	HOUSE 11	REPUBLICAN PARTY			MICHIGAN	1992 ELECTION	ID# H2MI11059
1. STATEMENT OF CANDIDATE							
1992 STATEMENT OF CANDIDATE					28MAY92	1	92HSE/453/1000
2. PRINCIPAL CAMPAIGN COMMITTEE							
ALICE GILBERT FOR CONGRESS					ID #000269167	HOUSE	
1992 STATEMENT OF ORGANIZATION					29MAY92	1	92HSE/453/1010
48 HOUR CONTRIBUTION NOTICE					20JUL92	1	92HSE/458/2007
48 HOUR CONTRIBUTION NOTICE					20JUL92	1	92HSE/463/0750
48 HOUR CONTRIBUTION NOTICE					22JUL92	1	92HSE/462/1407
48 HOUR CONTRIBUTION NOTICE					24JUL92	1	92HSE/462/0800
48 HOUR CONTRIBUTION NOTICE					31JUL92	1	92HSE/463/2004
JULY QUARTERLY		219,716		77,752	1APR92 -30JUN92	76	92HSE/460/0840
REQUEST FOR ADDITIONAL INFORMATION					1APR92 -30JUN92	2	92FEC/778/0056
REQUEST FOR ADDITIONAL INFORMATION 2ND					1APR92 -30JUN92	3	92FEC/780/4740
PRE-PRIMARY		44,803		116,366	1JUL92 -15JUL92	56	92HSE/462/2187
REQUEST FOR ADDITIONAL INFORMATION					1JUL92 -15JUL92	3	92FEC/778/0058
REQUEST FOR ADDITIONAL INFORMATION 2ND					1JUL92 -15JUL92	4	92FEC/783/4709
OCTOBER QUARTERLY - TERMINATED		171,753		242,253	16JUL92 -30SEP92	58	92HSE/476/0800
OCTOBER QUARTERLY - AMENDMENT					16JUL92 -30SEP92	1	93HSE/499/0941
REQUEST FOR ADDITIONAL INFORMATION					16JUL92 -30SEP92	2	93FEC/834/1836
REQUEST FOR ADDITIONAL INFORMATION 2ND					16JUL92 -30SEP92	3	93FEC/837/0267
NOTICE OF FAILURE TO FILE					1OCT92 -31DEC92	1	93FEC/830/0718
TOTAL		436,372	0	436,371		215	TOTAL PAGES
3. AUTHORIZED COMMITTEES							
4. JOINT FUNDRAISING COMMITTEES AUTHORIZED BY THE CAMPAIGN							

All reports have been reviewed.

Cash on Hand as of 9/30/92: \$0

Debts and obligations owed by/to the committee as of 9/30/92: \$0

PRIMARY ELECTION

Attachment #2

REPORT NOTICE

FEDERAL ELECTION COMMISSION

MICHIGAN
Congressional Committees

June 29, 1992

FOR COMMITTEES INVOLVED IN THE PRIMARY (08/04):

REPORT	REPORTING PERIOD	REG./CERT. MAILING DATE*	FILING DATE
Pre-Primary	07/01/92 - 07/15/92**	07/20/92	07/23/92
48 Hour Notices	-----See Below-----		
October Quarterly	07/16/92 - 09/30/92	10/15/92	10/15/92

WHO MUST FILE

Principal campaign committees of congressional candidates (including unopposed candidates) who seek nomination in the primary must file the above reports and notices. If the campaign has more than one authorized committee, the principal campaign committee must also file a consolidated report on Form 32.

48 HOUR NOTICES ON CONTRIBUTIONS

Notices are required if the committee receives contributions (including contributions and loans from the candidate's personal funds; and endorsements or guarantees of bank loans) of \$1,000 or more, during the period of July 16 through August 1. The notices must reach the appropriate federal and state filing offices within 48 hours of the committee's receipt of the contribution(s).

LABEL

Affix the peel-off label from the envelope to Line 1 of the report. Corrections should be made on the label.

COMPLIANCE

TREASURERS ARE RESPONSIBLE FOR FILING ALL REPORTS AND 48 HOUR NOTICES ON TIME. FAILURE TO DO SO IS SUBJECT TO ENFORCEMENT ACTION. COMMITTEES USING NON-FEC FORMS FOR REPORTS OR FILING ILLEGIBLE REPORTS OR NOTICES WILL BE REQUIRED TO REFILE.

*Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

**The period begins with the close of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

FOR INFORMATION, Call: 800/424-9530 or 202/219-3420

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ST-10

Name of Cases Item On File

ARICE GIBBERT FOR CONGRUITY (66900000)

A. Full Name, Mailing Address and ZIP Code of Loan Source <u>ARICE L. GIBBERT</u> <u>3066 MIDLAND</u> <u>ORCHARD LANE, AL 35473</u> Station: ☐ Primary ☐ General ☐ Other (Specify):	Original Amount of Loan <u>66900.00</u>	Comulative Payment To Date <u>(66900.00)</u> <u>PAID</u>	Balance Outstanding at Close of This Period <u>- 0 -</u>
--	--	--	---

Term: Date Issued 6-22-88 Date Due _____ Interest Rate 12 % (Specify) ☐ Secured

List All Endorsers or Guarantors (if any) to Item A

1. Full Name, Mailing Address and ZIP Code	Name of Employer	
	Occupation	
	Amount Guaranteed Outstanding	
2. Full Name, Mailing Address and ZIP Code	Name of Employer	
	Occupation	
	Amount Guaranteed Outstanding	
3. Full Name, Mailing Address and ZIP Code	Name of Employer	
	Occupation	
	Amount Guaranteed Outstanding	

B. Full Name, Mailing Address and ZIP Code of Loan Source <u>ARICE L. GIBBERT</u> <u>3066 MIDLAND</u> <u>ORCHARD LANE, AL 35473</u> Station: ☐ Primary ☐ General ☐ Other (Specify):	Original Amount of Loan <u>100,000.00</u>	Comulative Payment To Date <u>(100,000.00)</u> <u>PAID</u>	Balance Outstanding at Close of This Period <u>- 0 -</u>
--	--	--	---

Term: Date Issued 2-8-88 Date Due _____ Interest Rate 12 % (Specify) ☐ Secured

List All Endorsers or Guarantors (if any) to Item B

1. Full Name, Mailing Address and ZIP Code	Name of Employer	
	Occupation	
	Amount Guaranteed Outstanding	
2. Full Name, Mailing Address and ZIP Code	Name of Employer	
	Occupation	
	Amount Guaranteed Outstanding	
3. Full Name, Mailing Address and ZIP Code	Name of Employer	
	Occupation	
	Amount Guaranteed Outstanding	

SUBTOTALS This Period This Page (optional)

TOTALS This Period (last page in this line only)

Carry outstanding balance only to LINE 2, Schedule D, for this line. If no Schedule D, carry forward to appropriate line of Summary.

Name of Contributor (in Full)

ARLES GILBERT FOR CONGRESS (600767167)

A. Full Name, Mailing Address and ZIP Code of Loan Source

ARLES L. GILBERT
 2066 MIDCLOAK
 ORCHARD LAKE, MI 48723

Station: ☒ Primary ☐ General ☐ Other (specify):

Term: Date Received 9-22-22

Date Due

Interest Rate 0% (Specify)

☐ Secured

Original Amount
 of Loan

25000.00

Contribution Payment
 To Date

(95000.00)
 FORGIVEN

Balance Outstanding at
 Close of This Period

- 0 -

List All Endorsers or Guarantors (if any) to Item A

1. Full Name, Mailing Address and ZIP Code

Name of Employer

Occupation

Amount Guaranteed Outstanding:

0

2. Full Name, Mailing Address and ZIP Code

Name of Employer

Occupation

Amount Guaranteed Outstanding:

0

3. Full Name, Mailing Address and ZIP Code

Name of Employer

Occupation

Amount Guaranteed Outstanding:

0

B. Full Name, Mailing Address and ZIP Code of Loan Source

ARLES L. GILBERT
 2066 MIDCLOAK
 ORCHARD LAKE, MI 48723

Station: ☒ Primary ☐ General ☐ Other (specify):

Term: Date Received 9-22-22

Date Due

Original Amount
 of Loan

487.16

Contribution Payment
 To Date

(487.16)
 FORGIVEN

Balance Outstanding at
 Close of This Period

- 0 -

List All Endorsers or Guarantors (if any) to Item B

1. Full Name, Mailing Address and ZIP Code

Name of Employer

Occupation

Amount Guaranteed Outstanding:

0

2. Full Name, Mailing Address and ZIP Code

Name of Employer

Occupation

Amount Guaranteed Outstanding:

0

3. Full Name, Mailing Address and ZIP Code

Name of Employer

Occupation

Amount Guaranteed Outstanding:

0

SUBTOTALS This Period This Page (optional)

- 0 -

TOTALS This Period (last page in this line only)

- 0 -

Carry outstanding balance only to LINE 2, Schedule D, for this line. If no Schedule D, carry forward to appropriate line of Summary.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Attachment 14
Page 1 of 2

BQ-2

APR 13 1993

Lori Brode Garon, Treasurer
Alice Gilbert for Congress
255 East Brown, Suite 110
Birmingham, MI 48009

Identification Number: C00269167

Reference: October Quarterly Termination Report (7/16/92-
9/30/92)

Dear Ms. Garon:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-On Schedule C of this report, you indicate \$10,560.53 in loan repayments. These repayments do not appear on Line 19(a) of this report and a supporting Schedule B. Please amend your report.

-Schedule A of your report indicates that your committee may have failed to file one or more of the required 48 hour notices regarding "last minute" contributions received by your committee after the close of books for the 12 Day Pre-Primary report. A principal campaign committee must notify the Commission, in writing, within 48 hours of any contribution of \$1,000 or more received between two and twenty days before an election. These contributions are then reported on the next report required to be filed by the committee. To ensure that the Commission is notified of last minute contributions of \$1,000 or more to your campaign, it is recommended that you review your procedures for checking contributions received during the aforementioned time period. Although the Commission may take legal action, any response you wish to make concerning this matter will be taken into consideration. (11 CFR §104.5(f))

-When a committee reports receiving a loan from the candidate, it is necessary to clarify whether or not the candidate used his/her personal funds or borrowed the money from a lending institution or any other source. If the candidate borrowed funds from a lending institution, or any other source, please provide the name of the lending institution and the complete terms

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of the loan. If the loan(s) was from personal funds, please acknowledge that fact in an amendment to this report. It is important to note that "personal funds" is strictly defined by Commission Regulations and may be found in 11 CFR §110.10. (11 CFR §§100.7(a)(1) and 104.3(d))

-Please note that if the candidate loans were from her personal funds, a letter from the candidate indicating that the loans were forgiven must be provided.

-On July 11, 1992, your committee received an apparent excessive contribution from the Wish List. Until the excessive amount is refunded, you should report it on a supporting Schedule D and include the amount on Line 10 of the Summary Page of your report.

A written response or an amendment to your original report(s) correcting the above problem(s) should be filed with the Clerk of the House of Representatives, 1036 Longworth House Office Building, Washington, DC 20515 within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 219-3580.

Sincerely,



Todd Gerlough
Reports Analyst
Reports Analysis Division

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RECEIVED
F.E.C.
SECRETARIAT

FEDERAL ELECTION COMMISSION 03 NOV 29 AM 11:50
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

RAD Referral #93L-59

STAFF MEMBER: Dominique Dillenseger

SOURCE: I N T E R N A L L Y G E N E R A T E D

RESPONDENTS: Alice Gilbert for Congress and Lori Brode Garon,
as treasurer

RELEVANT STATUTES: 2 U.S.C. § 434(a)(6)(A)
11 C.F.R § 104.5(f)

INTERNAL REPORTS CHECKED: Referral Material
Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

The Office of the General Counsel received a referral from the Reports Analysis Division ("RAD") on August 31, 1993. Attachment 1. The basis for the attached referral is the failure of the Alice Gilbert for Congress committee and Lori Brode Garon, as treasurer, ("the Respondents") to file two (2) forty-eight hour notifications ("48 Hour Notices") for contributions totaling \$125,000. The contributions were in the form of loans from the candidate, Alice L. Gilbert, received prior to the 1992 Primary Election. Ms. Gilbert lost the August 4, 1992 Primary Election in the 11th Congressional District of Michigan receiving twenty-seven percent (27%) of the vote.

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II. FACTUAL AND LEGAL ANALYSIS

Based on the Factual and Legal Analysis, see Attachment 2, this office recommends the Commission find reason to believe the Respondents violated 2 U.S.C. § 434(a)(6)(A).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

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IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that the Alice Gilbert for Congress committee and Lori Brode Garon, as treasurer, violated 2 U.S.C. § 434(a)(6)(A), and enter into conciliation prior to a finding of probable cause to believe.
3. Approve the attached Factual and Legal Analysis, proposed conciliation agreement, and the appropriate letter.

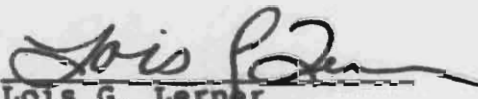
Lawrence M. Noble
General Counsel

Date

11/29/99

Counsel

BY:


Lois G. Lerner
Associate General

Attachments:

1. Referral Materials
2. Factual and Legal Analysis
3. Proposed Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Alice Gilbert for Congress and
Lori Brode Garon, as treasurer.

)
)
) RAD Referral
) #93L-59

MUR 3837

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on December 3, 1993, the Commission decided by a vote of 6-0 to take the following actions in RAD Referral #93L-59:

1. Open a MUR.
2. Find reason to believe that the Alice Gilbert for Congress Committee and Lori Brode Garon, as treasurer, violated 2 U.S.C. § 434(a)(6)(A), and enter into conciliation prior to a finding of probable cause to believe.
3. Approve the Factual and Legal Analysis, proposed conciliation agreement, and the appropriate letter, as recommended in the General Counsel's Report dated November 29, 1993.

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

Attest:

12-3-93

Date

MWE

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Mon., Nov. 29, 1993 11:50 a.m.
Circulated to the Commission: Mon., Nov. 29, 1993 4:00 p.m.
Deadline for vote: Thurs., Dec. 02, 1993 4:00 p.m.

bjr

96043735142



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

DECEMBER 7, 1993

Lori Brode Garon, Treasurer
Alice Gilbert for Congress
255 East Brown, Suite 110
Birmingham, MI 48009

RE: MUR 3837
Alice Gilbert for Congress
and Lori Brode Garon, as treasurer

Dear Ms. Garon:

On December 3, 1993, the Federal Election Commission found that there is reason to believe that the Alice Gilbert for Congress Committee ("the Committee") and you, as treasurer, violated 2 U.S.C. § 434(a)(6)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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 your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of 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.

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Lori Brode Garon, treasurer
Page 2

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.

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.

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 investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 219-3490.

Sincerely,



Scott E. Thomas
Chairman

Enclosures

Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

cc: Alice L. Gilbert (Letter and Factual and Legal Analysis)

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FEDERAL ELECTION COMMISSION
FACTUAL & LEGAL ANALYSIS

MUR: 3837

RESPONDENTS: Alice Gilbert for Congress
and Lori Brode, as Treasurer

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

The Federal Election Campaign Act of 1971, as amended, ("the Act") requires principal campaign committees of candidates for federal office to notify in writing either the Secretary of the Senate, the Clerk of the U.S. House of Representatives or the Commission, as appropriate, and the Secretary of State, of each contribution totaling \$1,000 or more received by any authorized committee of the candidate after the 20th day, but more than 48 hours before any election. 2 U.S.C. § 434(a)(6)(A). The Act further requires notification to be made within 48 hours after the receipt of the contribution and to include the name of the candidate and office sought, the date of receipt, the amount of the contribution, and the identification of the contributor. Id. The notification of these contributions shall be in addition to all other reporting requirements. 2 U.S.C. § 434(a)(6)(B).

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According to 2 U.S.C. § 431(8)(A) and 11 C.F.R. § 100.7(a)(1)(B), a loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid.

According to its Statement of Organization filed with the Commission, Alice Gilbert for Congress is the principal campaign committee of Alice L. Gilbert. Lori Brode Garon is the treasurer of the Alice Gilbert for Congress committee.

The Primary Election in the state of Michigan was held on August 4, 1992. Pursuant to the Act, the Respondents were required to notify the Commission, in writing, of all contributions of \$1,000 or more received from July 16 to August 1, 1992, within 48 hours of their receipt. A review of Schedule C of the Committee's 1992 October Quarterly Report identified two contributions of 1,000 or more: a \$100,000 loan from the candidate received on July 16, 1992, and a \$25,000 loan from the candidate received on July 29, 1992, for a total of \$125,000. The Committee did not submit 48 Hour Notices for either of these contributions.

Therefore, there is reason to believe that the Alice Gilbert for Congress committee and Lori Brode Garon, as treasurer, violated 2 U.S.C. § 434(a)(6)(A) by failing to report, within 48 hours of their receipt, two campaign contributions of \$1,000 or more which were received after the 20th day, but more than 48 hours before the primary election.

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OLDAKER, RYAN & LEONARD

ATTORNEYS AT LAW

810 CONNECTICUT AVENUE, N.W.

SUITE 1100

WASHINGTON, D.C. 20008

(202) 728-1010

FACSIMILE (202) 728-4044

December 28, 1993

Ms. Dominique Dillenseger
Office of the General Counsel
Federal Election Commission
999 E Street
Washington, DC 20463

RE: MUR 3837

Dear Ms. Dillenseger:

I am writing to request an extension on behalf of my clients, Alice Gilbert for Congress and Lori Brode Garon, as treasurer, in their response to MUR 3837. The complaint was received by the respondents on December 15, 1993. A response is therefore due on December 30, 1993. However, as both respondents and counsel will be out of town during this period, we will be unable to respond to the complaint by this date. We therefore request a 20 day extension until January 19, 1994. I appreciate your assistance in this matter.

Sincerely,

Lyn Utrecht

Lyn Utrecht

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STATEMENT OF DESIGNATION OF COUNSELNEN 3837NAME OF COUNSEL: Lyn Utrecht

ADDRESS:

818 Connecticut Ave., NWSuite 1100Washington, DC 20006

TELEPHONE:

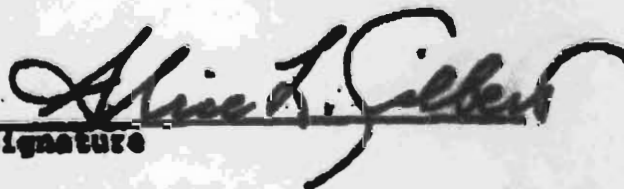
(202) 728-1010

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.

12/15/93

DATE

Signature



RESPONDENT'S NAME:

Alice Gilbert for Congress; Lori Brode Garon, treasurer
Alice L. Gilbert

ADDRESS:

3066 MiddlebeltOrchard Lake, MI 48323

HOME PHONE:

BUSINESS PHONE:

(313) 546-8292

960437-35148



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 30, 1993

Lyn Utrecht, Esquire
Oldaker, Ryan & Leonard
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 3837
Alice Gilbert for Congress
and Lori Brode Garon, as
treasurer

Dear Ms. Utrecht:

This is in response to your letter dated December 28, 1993, requesting a 20-day extension until January 19, 1994, to respond to our notification letter in the above-referenced matter. 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 January 19, 1994.

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

Sincerely,

Dominique Dillenseger

Dominique Dillenseger *kw*
Attorney

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OLDAKER, RYAN & LEONARD

ATTORNEYS AT LAW

818 CONNECTICUT AVENUE, N.W.

SUITE 1100

WASHINGTON, D.C. 20006

(202) 728-1010

FACSIMILE (202) 728-4044

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RECEIVED
FEDERAL ELECTION COMMISSION

January 19, 1994

Ms. Dominique Dillenseger
Office of the General Counsel
Federal Election Commission
999 E Street
Washington, DC 20463

RE: **MUR 3837**

Dear Ms. Dillenseger:

This letter is in response to the December 7, 1993 notification from the Federal Election Commission (the "Commission"). On December 7, 1993, the Commission found reason to believe that the Alice Gilbert for Congress Committee (the "Committee") and Lori Brode Garon, as treasurer, failed to file 48-Hour Notices for two loans to the Committee by the candidate. This finding was made almost a year-and-a-half after the dates on which the loans should have been reported.

In the time period after the 20th day, but more than 48-hours before the August 1992 primary election, the Committee filed 14 48-Hour Notices with the Federal Election Commission (the "Commission"). All contributions of \$1000 or more other than the two loans in question were reported in a timely manner as required. However, the Committee did not understand at that time that these loans were considered contributions for purposes of the 48-hour reporting requirement. This was a simple and understandable mistake, since loans are treated differently than other contributions for purposes of the general reporting requirements of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431 et seq. ("the Act"). The loans were fully reported on Schedule C of the Committee's next report.

Furthermore, the main purpose of 48-Hour reporting is to ensure that, prior to the election, the public is made aware of last-minute contributions that may influence the candidate if elected. However, as these loans came from the candidate herself, no threat of undue influence existed.

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The Committee is still in existence solely because it has outstanding debts in the amount of \$214,005.31. Alice Gilbert is no longer a candidate and the Committee has no prospects of raising this money in the future.

Furthermore, the individuals involved in this error now understand the correct procedure for reporting loans. If in the future, any of these individuals were to be involved in a similar situation, they would be able to correctly handle the reporting of such contributions.

Clearly, the Committee's failure to report the two loans from the candidate was an unintentional mistake with no harmful consequences.

In support of the above facts, we have enclosed an affidavit from the Committee's Vice Treasurer. We believe that under the circumstances outlined above, the Commission should take no further action and close the file in this matter.

We respectfully request that the complaint be thus resolved and no further action taken.

Sincerely,

Lyn Utrecht
Lyn Utrecht

STATEMENT OF STEVEN B. FISHER

I, Steven B. Fisher, state as follows:

1. I am currently Vice Treasurer for the Alice Gilbert for Congress Committee (the "Committee") and served in this capacity throughout the 1992 campaign.
2. After the 20th day, but more than 48 hours before the primary election, 14 contributions of \$1,000 or more were reported within 48 hours of receipt of the contribution.
3. All loans to the Committee were reported on Schedule C when reports were due. At the time these loans were accepted, the Committee was unaware that they were considered contributions for purposes of the 48-hour reporting requirements.
4. The Committee currently has depleted all remaining funds and has a number of outstanding debts. These debts are the only reason that the Committee has not yet been terminated. Furthermore, the Committee has no prospects to raise these funds in the future.

I hereby swear or affirm, under threat of penalty or perjury, that to the best of my knowledge and belief, the above statements are true and correct.



Steven B. Fisher

Date: 1-17-94

96043735152



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 10, 1994

VIA FACSIMILE

Lyn Utrecht, Esquire
Oldaker, Ryan & Leonard
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 3837
Alice Gilbert for Congress
Committee and Lori Brode Garon,
as treasurer

Dear Ms. Utrecht:

In the statement of Steven B. Fisher attached to your letter dated January 19, 1994, he contends that the Committee failed to file 48-hour reports of candidate loans because "the Committee was unaware that they were considered contributions for purposes of the 48-hour reporting requirements."

Pursuant to our telephone conversation of February 4, 1994, in which we discussed Mr. Fisher's contention, I am attaching a copy of a form letter that was sent to all candidates. As you can see, this letter explicitly states that the 48-hour reporting rule applies to candidate loans. This letter, along with the Campaign Guide and an informational videotape, were sent to all candidates in the 1992 election cycle shortly after they registered with the Federal Election Commission ("the Commission").

In addition to this letter, the Commission also sent a prior notice to the Alice Gilbert for Congress Committee on June 29, 1992, which clearly stated that principal campaign committees are required to submit 48-Hour Notices for contributions and loans from the candidate received during the period of July 16 through August 1, 1992. Through the letter, reference materials, and the prior notice, inter alia, the Commission made the candidate and the Committee "aware" of the 48-hour reporting requirements, including its application to candidate loans.

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In light of the time limitations for preprobable cause conciliation, it is necessary that this Office receives your response to our proposed conciliation agreement by close of business on Monday, February 14, 1994.

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

Sincerely,

D. Hillenseger
Dominique Dillenseger
Attorney

Attachment

96043735154

OLDAKER, RYAN & LEONARD

ATTORNEYS AT LAW

816 CONNECTICUT AVENUE, N.W.

SUITE 1100

WASHINGTON, D.C. 20006

(202) 728-1010

FACSIMILE (202) 728-4044

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RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

MAR 7 9 01 AM '94

February 25, 1994

Ms. Dominique Dillenseger
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

RE: MUR 3837

Dear Ms. Dillenseger:

This letter is in response to your letter dated February 10, 1994 regarding a letter sent to all candidates discussing 48-hour reporting.

As the attached affidavit indicates, Steven Fisher, who was responsible for all FEC reporting, does not recollect seeing the letter during the campaign. Nor does the candidate have any recollection of such a letter. However, upon reviewing his files, Mr. Fisher found the letter in question. It is addressed "Dear Candidate," and has no date on it. We therefore have no way of knowing when the letter was sent and who on the campaign staff received it. As the letter was addressed to the candidate, who took no part in FEC reporting, there would be little chance that Mr. Fisher would ever see the letter. In fact, the Commission's decision to send the letter suggests that there was significant misunderstanding of the 48-hour reporting requirement.

Furthermore, if the letter was received early in the campaign, it could have easily been misplaced among the influx of paper during a very chaotic period. Yet, for all we know, the letter was not even mailed until after the primary election, thus making it useless for pre-primary 48-hour reporting.¹ In any event, Mr. Fisher did not see the letter during the campaign.

Mr. Fisher was given verbal instructions regarding 48-hour reporting shortly before the 20th day before the election. He followed these instructions as he understood them. Not reporting the two candidate loans on 48-hour reports was an oversight which

¹ One other similar letter to presidential candidates in 1992 was sent by the Commission very late in the primary season.

resulted from the fact that Mr. Fisher failed to realize the requirement of such reporting. Please find an affidavit from Mr. Fisher attached to this letter. The individuals involved in this matter now understand the correct manner in which to report such loans. In the event that any of these individuals are responsible for 48-hour reporting in the future, they will comply fully with the requirements.

Sincerely,

Lyn Utrecht

Lyn Utrecht

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OLDAKER, RYAN & LEONARD

ATTORNEYS AT LAW

815 CONNECTICUT AVENUE, N.W.

SUITE 1100

WASHINGTON, D.C. 20006

(202) 728-1010

FACSIMILE (202) 728-4044

94 MAR -7 PM 2:33

March 3, 1994

Ms. Dominique Dillenseger
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

RE: MUR 3837

Dear Ms. Dillenseger:

Enclosed is the affidavit from Steven Fisher which addresses your inquiries regarding a letter sent by the FEC explaining 48-hour reporting requirements.

On March 1, 1994, Mr. Fisher received an additional letter from the FEC with a new FEC form specifically for 48-hour reporting attached. A copy of the letter and form are enclosed. The form states that loans are required to be reported on 48-hour notices. By specifically clarifying this issue, the FEC has recognized that there has been significant confusion regarding the reporting of loans on 48-hour reports. To retroactively hold the Alice Gilbert for Congress Committee responsible for this knowledge is manifestly unfair.

We therefore respectfully request that the Commission accept the Committee's proposed conciliation agreement in this matter.

Sincerely,

Lyn Utrecht

Lyn Utrecht

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AFFIDAVIT OF STEVEN B. FISHER

I, Steven B. Fisher, state as follows:

1. During the 1992 primary campaign, I was named as the Vice Treasurer of the Alice Gilbert for Congress Committee (the "Committee"). Upon being informed of my having been named, I served to the best of my ability, in this capacity throughout the campaign.

2. I prepared all of the FEC reports which were filed by the Committee.

3. The Treasurer was the person to whom all correspondence had been directed. I was never in possession of any instructions on how one might comply with the myriad of rules and regulations governing an FEC report and how to file same. I did not see any letter regarding 48-hour reporting, but rather was told verbally by the campaign manager of the requirement. Upon learning of this requirement, I contacted the FEC regarding what type of form should be used, and was advised that there was no specific form. I used a form which was modified by me for this purpose. As of the date of this affidavit, the FEC has only this week provided a form designed expressly for this purpose. (A copy of this form and the cover letter which was with it is enclosed herewith.)

4. During telephone conversations with the FEC which specifically concerned 48-hour reporting procedures, I was never advised nor reminded that "loans" also constituted "contributions" and as such should also be reported to the FEC on a 48-hours basis. (It should be noted that this is diametrically opposed to Generally Accepted Accounting Principles.)

5. The Committee is currently \$214,005.31 in debt and has no prospects of raising these funds.

6. I as the "Vice Treasurer" never received any compensation in connection with the campaign, and do not personally have the assets to pay a penalty.

7. The candidate is retired, and is owed a significant debt from the committee.

I hereby swear or affirm, under threat of penalty of perjury, that to the best of my knowledge and belief, the above statements are true and correct.


Steven B. Fisher

March 2, 1994



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 25, 1994

MEMORANDUM

TO: House and Senate Candidate Committees
FROM: Information Division
SUBJECT: FEC Form 6: New Form for 48 Hour Notices on Contributions

Commission regulations at 11 CFR 104.5 require candidate committees to file special notices regarding contributions of \$1,000 or more received less than 20 days but more than 48 hours before the day of an election. Candidate committees must file these "48-Hour Notices" with the Clerk of the House or the Secretary of the Senate, as appropriate, within 48 hours of receiving such contributions. Committees must simultaneously file a copy of this notice with the Secretary of State (or appropriate state officer) in the state in which the candidate seeks election.

To further assist you in providing complete 48-Hour Notices, the Commission has developed a new form, Form 6, which is enclosed. The form has been designed to disclose all of the information your committee is required to report (e.g. candidate's name, office sought, contributor identification, amount and date of receipt) in a uniform, easy-to-read format. Form 6 may be faxed to the:

Clerk of the House 202-225-7781
Secretary of the Senate 202-224-1851

Please note that use of the new form is entirely optional. If you have any questions regarding the form or its use, please contact the Information Division at 1-800-424-9530 or 202-219-3420.

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48 HOUR NOTICE OF CONTRIBUTIONS/LOANS RECEIVED

(See Reverse Side for Instructions)

To be used to report all contributions (including loans) of \$1000 or more, received within 20 days of the election.

1. NAME OF COMMITTEE IN FULL	
ADDRESS (number and street)	
CITY, STATE, and ZIP CODE	
2. NAME OF CANDIDATE	3. OFFICE SOUGHT

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.

4. FEC IDENTIFICATION NUMBER

A. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount
	Occupation		
B. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount
	Occupation		
C. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount
	Occupation		
D. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount
	Occupation		
E. Full Name, Mailing Address and ZIP Code	Name of Employer	Date (month, day, year)	Amount
	Occupation		
SIGNATURE (optional)		DATE	For further information contact: Federal Election Commission 999 E Street, NW, Washington, DC 20463 Toll Free 800-424-9530, Local 202-219-3420

FEC FORM 6

(11/93)

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THE FEDERAL ELECTION COMMISSION

MAY 4 10 15 AM '94

In the Matter of)

MUR 3837

SENSITIVE

)
) Alice Gilbert for Congress)
) and Lori Brode Garon, as treasurer)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On December 3, 1993, the Federal Election Commission found reason to believe that the Alice Gilbert for Congress Committee and Lori Brode Garon, as treasurer, ("the Respondents") violated 2 U.S.C. § 434(a)(6)(A) by failing to file timely two (2) forty-eight (48) hour notifications ("48-hour notices") for contributions totaling \$125,000. At the same time, the Commission determined to offer to enter into preprobable cause conciliation with the Respondents and approved a conciliation agreement with a civil penalty

On January 19, 1994, counsel for the Respondents submitted a response requesting that the Commission take no further action and close the file. The response includes a statement from Steven B. Fisher,¹ vice-treasurer for the Alice Gilbert for Congress Committee ("the Committee") during the 1992 campaign, and a proposed conciliation agreement. Attachment 1.

1. According to counsel, Steven B. Fisher has, from the beginning, performed all the duties of treasurer for the Committee, while Lori Brode Garon, the named treasurer, was never really involved and is pretty much out of the picture.

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In response, this Office advised counsel that not only are the Respondents charged with knowledge of the law, but the Commission also made the candidate and the Committee "aware" of the 48-hour reporting requirements, including its specific application to candidate loans, through the following: (1) a form letter sent to all candidates in the 1992 election cycle shortly after they registered with the Federal Election Commission, which

explicitly states that the 48-hour reporting rule applies to candidate loans; (2) general instructional materials such as the Campaign Guide and an informational videotape which were sent with the form letter; and (3) the prior notice sent to the Alice Gilbert for Congress Committee on June 29, 1992, which clearly stated that principal campaign committees are required to submit 48-hour notices for contributions and loans from the candidate received during the period July 16 through August 1, 1992.

Attachment 2.

On February 25, 1994, counsel submitted a second response. Attachment 3. In this response, counsel admits that the Committee received the form letter explaining the application of the 48-hour notices to candidate loans, but makes the following arguments: (1) neither Mr. Fisher nor the candidate recalled "seeing the letter during the campaign," although Mr. Fisher did find the form letter while "reviewing his files"; (2) because the letter was addressed "Dear Candidate" and was undated, it could not be determined "when the letter was sent and who on the campaign staff received it"; (3) a letter addressed to the candidate "who takes no part in FEC reporting" would have "little chance" of being seen by Mr. Fisher; (4) the sending of the form letter suggests

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"significant misunderstanding of the 48-hour reporting requirement"; and (5) the letter "could have easily been misplaced among the influx of paper."

Counsel also contends that the failure to report the two candidate loans was "unintentional," based on Mr. Fisher's failure "to realize the requirement of such reporting," and that there was "no evidence that any individual personally knew that loans should have been included."

In a third letter to this Office dated March 3, 1994, counsel submitted the affidavit of Steven Fisher, who was the vice-treasurer for the Committee during the 1992 campaign and the individual who prepared and signed all the FEC reports filed by the Committee. Mr. Fisher declares the following: (1) all FEC correspondence was directed to the treasurer; (2) he "was never in possession of any instructions on how one might comply with the myriad of rules and regulations governing an FEC report"; (3) he "did not see any letter" on 48-hour reporting but "was told verbally by the campaign manager of this requirement"; (4) he contacted the FEC to find out what form to use for 48-hour reporting and "was advised that there was no specific form"; (5) he was not told on the telephone that "loans" were considered "contributions" and would have to be reported to the FEC; (6) he

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did not receive any compensation as vice-treasurer and does not "personally have the assets to pay a penalty"; and, (7) the candidate has retired and that the Committee owes her a "significant debt." Attachment 4.

In the letter that submitted the above affidavit, counsel notes that Mr. Fisher received a letter from the FEC on March 1, 1994, enclosing the new FEC Form 6 for 48-hour reporting. Attachment 4. Counsel points out that this form, which indicates that loans must be also be reported on 48-hour reports, demonstrates that the FEC recognizes that there is "significant confusion" in this area. Counsel concludes that it would be "manifestly unfair" to "retroactively hold the . . . Committee responsible for this knowledge."

II. DISCUSSION

Under 2 U.S.C. § 432(a), every political committee shall have a treasurer. The treasurer's responsibilities are set forth in Sections 432 and 434 of the Act. For example, 2 U.S.C. § 432(c) provides a list of all records of which the treasurer is required to keep an account. In performing recordkeeping duties, the treasurer shall use best efforts to obtain, maintain and submit the required information and shall keep a complete record of such efforts. 11 C.F.R. § 102.9(d). Section 434(a)(1) of the Act provides that the treasurer shall file reports of receipts and disbursements and shall sign each report. 2 U.S.C. § 434(b) sets forth the requirements for the contents of each report required to be filed under Section 434.

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The Respondents first contend that they did not file the required 48-hour notices for candidate loans because they were not aware that requirement applied to candidate loans. They further contend that the mistake was unintentional and that they did their best to comply as evidenced by their timely filing of fourteen 48-hour notices for contributions not involving candidate loans.

Although the Respondents claim they were unaware that candidate loans were considered contributions for purposes of 48-hour notices, the evidence is clear that the Commission did send the candidate and the Committee instructional materials informing them of that requirement. In fact, the Respondents admit receipt of the instructional form letter on the 48-hour notice requirement for candidate loans, and Mr. Fisher admits that the campaign manager advised him of this requirement.

The Respondents' argument is essentially that the treasurer failed to inform the vice-treasurer adequately of the 48-hour notice requirements. The Respondents do not explain what was inadequate about the campaign manager's instructions or the instructional notifications sent by the Commission. It is clear, however, that the Commission cannot be held responsible for the Committee's apparent lack of organization or training, as the Respondents suggest. The treasurer's failure to ensure proper reporting by either failing to inform or instruct the vice-treasurer clearly does not demonstrate "best efforts" to ensure that the Committee reports comply with FEC rules.

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Given the circumstances of this case, this Office recommends that the Commission reject the Respondents' request to take no further action. Given the time that has elapsed in preprobable cause conciliation and since efforts to negotiate a preprobable cause conciliation agreement have failed, this Office intends to proceed to the next stage of the enforcement process.

III. Recommendations

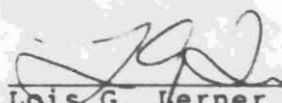
1. Reject the request to take no further action and the proposed conciliation agreement submitted on behalf of the Alice Gilbert for Congress Committee and Lori Brode Garon, as treasurer.
2. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

Date

5/3/94

BY:


Lois G. Lerner
Associate General Counsel

Attachments:

1. Respondents' counteroffer, dtd January 19, 1994
2. OGC letter, dtd February 10, 1994
3. Respondents' letter, dtd February 25, 1994
4. Respondents' letter, dtd March 3, 1994
5. Respondents' 1993 Mid-Year Report

Staff assigned: Dominique Dillenseger

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FEDERAL ELECTION COMMISSION

WASHINGTON DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

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

DATE: MAY 9, 1994

SUBJECT: MUR 3837 - GENERAL COUNSEL'S REPORT
DATED MAY 3, 1994.

The above-captioned document was circulated to the
Commission on Wednesday, May 4, 1994 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> </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, May 17, 1994.

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)
Alice Gilbert for Congress) MUR 3837
and Lori Brode Garon, as)
treasurer.)

CERTIFICATION

I, Delores Hardy, recording secretary for the Federal Election Commission executive session on Tuesday, May 17, 1994, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions in MUR 3837:

1. Reject the request to take no further action and the proposed conciliation agreement submitted on behalf of the Alice Gilbert for Congress Committee and Lori Brode Garon, as treasurer.
2. Approve the appropriate letter, as recommended in the General Counsel's Report dated May 3, 1994.

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

Attest:

May 17, 1994
Date

Delores Hardy
Delores Hardy
Administrative Assistant

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 19, 1994

Lyn Utrecht, Esquire
Oldaker, Ryan & Leonard
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 3837
Alice Gilbert for Congress
Committee and Lori Brode Garon,
as treasurer

Dear Ms. Utrecht:

This letter is to confirm the Federal Election Commission's receipt of your request to take no further action and the proposed conciliation agreement you submitted on behalf of the Alice Gilbert for Congress Committee and Lori Brode Garon, as treasurer. The Commission has reviewed and rejected your request and the proposed conciliation agreement. Insofar as the 30-day period for pre-probable cause conciliation has elapsed and no agreement has been reached, this Office will proceed to the next stage of the enforcement process.

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

Sincerely,

Dominique Dillenseger

Dominique Dillenseger
Attorney

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

June 2, 1994

Lyn Utrecht, Esquire
Oldaker, Ryan & Leonard
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 3837
Alice Gilbert for Congress
Committee and Lori Brode Garon,
as treasurer

Dear Ms. Utrecht:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, on December 3, 1993, the Federal Election Commission found reason to believe that your clients, the Alice Gilbert for Congress Committee and its treasurer, Lori Brode Garon, violated 2 U.S.C. § 434(a)(6)(A), and instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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MUR 3837

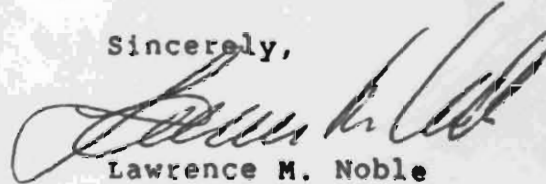
Lori Brode Garon, as treasurer

page 2

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Brief

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THE FEDERAL ELECTION COMMISSION

In the Matter of)
Alice Gilbert for Congress Committee) NUR 3837
and Lori Brode Garon, as treasurer)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). On December 3, 1993, the Commission found reason to believe that the Alice Gilbert for Congress Committee and Lori Brode Garon, as treasurer, ("the Respondents") violated 2 U.S.C. § 434(a)(6)(A) by failing to file timely two (2) forty-eight (48) hour notifications ("48-hour notices") for contributions totaling \$125,000.

This Office subsequently engaged in preprobable cause conciliation negotiations, but was unable to reach an agreement with the Respondents. This brief sets forth the General Counsel's position on the factual and legal issues in this matter and the recommendation that there is probable cause to believe a violation has occurred. 11 C.F.R. § 111.16(a).

II. ANALYSIS

The Federal Election Campaign Act of 1971, as amended, ("the Act") requires principal campaign committees of candidates for federal office to notify in writing either the Secretary of the Senate, the Clerk of the U.S. House of Representatives or the

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Commission, as appropriate, and the Secretary of State, of each contribution totaling \$1,000 or more received by any authorized committee of the candidate after the 20th day, but more than 48 hours before any election. 2 U.S.C. § 434(a)(6)(A). The Act further requires notification to be made within 48 hours after the receipt of the contribution and to include the name of the candidate and office sought, the date of receipt, the amount of the contribution, and the identification of the contributor. Id. The notification of these contributions shall be in addition to all other reporting requirements. 2 U.S.C. § 434(a)(6)(B). A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. 2 U.S.C. § 431(8)(A) and 11 C.F.R. § 100.7(a)(1)(B).

Under 2 U.S.C. § 432(a), every political committee shall have a treasurer. The treasurer's responsibilities are set forth in Sections 432 and 434 of the Act. For example, 2 U.S.C. § 432(c) provides a list of all records of which the treasurer is required to keep an account. In performing recordkeeping duties, the treasurer shall use best efforts to obtain, maintain and submit the required information and shall keep a complete record of such efforts. 11 C.F.R. § 102.9(d). Section 434(a)(1) of the Act provides that the treasurer shall file reports of receipts and disbursements and shall sign each report. 2 U.S.C. § 434(b) sets forth the requirements for the contents of each report required to be filed under Section 434.

According to its Statement of Organization filed with the Commission, Alice Gilbert for Congress is the principal campaign

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committee of Alice L. Gilbert and Lori Brode Garon is the treasurer of the Committee.

The Primary Election in the state of Michigan was held on August 4, 1992. Pursuant to the Act, the Respondents were required to notify the Commission, in writing, of all contributions of \$1,000 or more received from July 16 to August 1, 1992, within 48 hours of their receipt. A review of Schedule C of the Committee's 1992 October Quarterly Report identifies two contributions of \$1,000 or more during this time period: a \$100,000 loan from the candidate received on July 16, 1992, and a \$25,000 loan from the candidate received on July 29, 1992, for a total of \$125,000. The Committee did not submit 48-hour notices for either of these contributions, in violation of 2 U.S.C. § 434(a)(6)(A).

Although the Respondents admit they failed to file the required 48-hour notices for the candidate loans, they contend that this was an unintentional mistake and that they were unaware that the requirement applied to candidate loans. The Committee did file timely fourteen 48-hour notices for contributions not involving candidate loans. In addition, Steven B. Fisher, the assistant treasurer for the Committee, alleges that the treasurer failed to inform him of this requirement.

First, the Respondents' contention that they were unaware that candidate loans were considered contributions for purposes of 48-hour notices does not relieve them of responsibility in this matter. Not only are the Respondents charged with knowledge of the law, but the evidence shows that the Commission made the

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candidate and the Committee "aware" of the 48-hour reporting requirements, including its specific application to candidate loans, through the following: (1) a form letter sent to all candidates in the 1992 election cycle shortly after they registered with the Federal Election Commission, which explicitly states that the 48-hour reporting rule applies to candidate loans; (2) general instructional materials such as the Campaign Guide and an informational videotape which were sent with the form letter; and (3) the prior notice sent to the Alice Gilbert for Congress Committee on June 29, 1992, which clearly stated that principal campaign committees are required to submit 48-hour notices for contributions and loans from the candidate received during the period July 16 through August 1, 1992. In fact, the Respondents admit receipt of the instructional form letter and Mr. Fisher, the assistant treasurer, admits that the campaign manager advised him of this requirement.

Further, although the Respondents argue that the treasurer failed to inform the assistant treasurer adequately of the 48-hour notice requirements, they do not explain what was inadequate about the campaign manager's instructions or the instructional notifications sent by the Commission. In addition, it is clear that the Commission cannot be held responsible for the Committee's apparent lack of organization or training, as the Respondents suggest. The treasurer's failure to ensure proper reporting by either failing to inform or instruct the assistant treasurer clearly does not demonstrate "best efforts" to ensure that the Committee reports comply with FEC rules.

For the foregoing reasons, this Office recommends that the Commission find there is probable cause to believe that the Alice Gilbert for Congress Committee and Lori Brode Garon, as treasurer, violated 2 U.S.C. § 434(a)(6)(A) by failing to report, within 48 hours of their receipt, two campaign contributions of \$1,000 or more which were received after the 20th day, but more than 48 hours before the general election.

III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that the Alice Gilbert for Congress Committee and Lori Brode Garon, as treasurer, violated 2 U.S.C. § 434(a)(6)(A).

Date

6/1/99



Lawrence M. Noble
General Counsel

Staff assigned: Dominique Dillenseger

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OLDAKER, RYAN & LEONARD

ATTORNEYS AT LAW

610 CONNECTICUT AVENUE, N.W.

SUITE 1100

WASHINGTON, D.C. 20006

(202) 726-1010

FACSIMILE (202) 726-4044

June 9, 1994

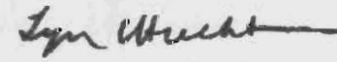
Ms. Dominique Dillenseger
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

RE: MUR 3837

Dear Ms. Dillenseger:

I am writing to request an extension of time to respond to the General Counsel's brief recommending probable cause in the above-referenced matter. We received your letter on June 7, 1994, making a response due on June 22, 1994. However, due to a number of other upcoming FEC deadlines facing counsel, as well as previously set vacation plans, we are requesting a 20-day extension, making a response due on July 12, 1994. We appreciate your assistance in this matter.

Sincerely,



Lyn Utrecht

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JUN 9 4 11 PM '94

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 13, 1994

Lyn Utrecht, Esquire
Oldaker, Ryan & Leonard
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 3837
Alice Gilbert for Congress
and Lori Brode Garon, as
treasurer

Dear Ms. Utrecht:

This is in response to your letter dated June 9, 1994, requesting a 20-day extension until July 12, 1994, to respond to our General Counsel's Brief recommending probable cause to believe in the above-captioned matter. 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 12, 1994.

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

Sincerely,

Dominique Dillenseger

Dominique Dillenseger
Attorney

96043735180

OLDAKER, RYAN & LEONARD

ATTORNEYS AT LAW

818 CONNECTICUT AVENUE, N.W.

SUITE 1100

WASHINGTON, D.C. 20006

(202) 728-1010

FACSIMILE (202) 728-4044

RECEIVED
FEDERAL ELECTION
COMMISSION
ADMINISTRATIVE DIVISION 4

JUL 12 5 00 PM '94

July 12, 1994

Mr. Lawrence Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

RE: MUR 3837
Alice Gilbert for Congress Committee and
Lori Brode Garon, as treasurer

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
JUL 13 9 29 AM '94

Dear Mr. Noble:

In reference to MUR 3837, the General Counsel's office has indicated its intention to recommend on June 2, 1994, that the Commission find probable cause to believe Alice Gilbert for Congress Committee (the "Committee") and Lori Brode Garon, as treasurer, violated 2 U.S.C. Sec. 434 (a)(6)(A) by failing to file timely two reports within the 48-hours for contributions in the form of loans from the candidate. In spite of this recommendation, I request that the Commission take no further action in this matter and that no civil penalty be assigned.

As stated in the affidavit of Steven B. Fisher, Vice Treasurer for the Alice Gilbert for Congress Committee, the Committee was unaware that loans were considered as contributions for the purposes of 48-hour reporting requirements. Alice Gilbert was a first-time candidate for public office, and her staff was unfamiliar with FEC rules and regulations. It is also understandable that Steven B. Fisher, Vice Treasurer of the Committee and a certified public accountant, reasonably assumed that loans were treated differently than contributions since they are not the same under tax laws and accounting principles with which he was most familiar (see attached affidavit). Moreover, Mr. Fisher contacted the Federal Election Commission more than once to inquire about 48-hour reporting requirements. At no time did the Commission staff mention that loans were considered as contributions for the purpose of this requirement. Therefore, although Mr. Fisher had access to the campaign brochures, this particular issue was not brought to his attention.

Furthermore, as stated in Mr. Fisher's affidavit, he used his own modified form. The Commission did not even issue a form for this purpose until February 25, 1994, nearly two years later. The form clarifies that loans as well as contributions are subject to 48-hour reporting. The issuance of a new form for this purpose indicates that other committees have also been unfamiliar with the treatment of loans for reporting purposes. Therefore, it was not unreasonable that the Committee made a similar mistake.

Furthermore, it is obvious that the Committee intended to comply with the Act and fully disclose the candidate's loans to the Committee. In the time period after the 20th day, but more than 48-hours before the August primary election, the Committee filed 14 48-Hour Notices with the Federal Election Commission. All contributions of \$1000 or more other than the two loans in question were reported in a

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timely manner as required. Moreover, the two loans were fully reported on the July Quarterly report, the Committee's next report.

The intent of the Commission when instituting the 48-hour reporting requirement was to insure, prior to the election, that the public is made aware of last-minute contributions that may influence the candidate if elected. In this case, however, Alice Gilbert herself guaranteed the loans, in no way undermining the intent or effectiveness of the regulation.

Alice Gilbert is no longer a candidate for Congress and the Committee has no prospects of raising money in the future. The Committee is still in existence for the sole purpose of settling outstanding debts in the amount of \$214,005.31.


Lyn Utrecht

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AFFIDAVIT OF STEVEN B. FISHER

I, Steven B. Fisher, state as follows:

1. During the 1992 primary campaign, I was named as the Vice Treasurer of the Alice Gilbert for Congress Committee (the "Committee"). Upon being informed of my having been named, I served to the best of my ability, in this capacity throughout the campaign.

2. I prepared all of the FEC reports which were filed by the Committee.

3. The Treasurer was the person to whom all correspondence had been directed. I was never in possession of any instructions on how one might comply with the myriad of rules and regulations governing an FEC report and how to file same. I did not see any letter regarding 48-hour reporting, but rather was told verbally by the campaign manager of the requirement. Upon learning of this requirement, I contacted the FEC regarding what type of form should be used, and was advised that there was no specific form. I used a form which was modified by me for this purpose. As of the date of this affidavit, the FEC has only this week provided a form designed expressly for this purpose. (A copy of this form and the cover letter which was with it is enclosed herewith.)

4. During telephone conversations with the FEC which specifically concerned 48-hour reporting procedures, I was never advised nor reminded that "loans" also constituted "contributions" and as such should also be reported to the FEC on a 48-hours basis. (It should be noted that this is diametrically opposed to Generally Accepted Accounting Principles.)

5. The Committee is currently \$214,005.31 in debt and has no prospects of raising these funds.

6. I as the "Vice Treasurer" never received any compensation in connection with the campaign, and do not personally have the assets to pay a penalty.

7. The candidate is retired, and is owed a significant debt from the committee.

I hereby swear or affirm, under threat of penalty of perjury, that to the best of my knowledge and belief, the above statements are true and correct.


Steven B. Fisher

March 2, 1994

06043735133

BEFORE THE FEDERAL ELECTION COMMISSION

AUG 11 10 59 AM '94
SENSITIVE

In the Matter of)
Alice Gilbert for Congress) MUR 3837
and Lori Brode Garon, as treasurer)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On December 3, 1993, the Federal Election Commission opened a MUR and found reason to believe that the Alice Gilbert for Congress Committee and Lori Brode Garon, as treasurer, ("the Respondents") violated 2 U.S.C. § 434(a)(6)(A) by failing to file timely two 48-hour notices for contributions totaling \$125,000. On that same date, the Commission determined to offer to enter into preprobable cause conciliation with the Respondents and approved a conciliation agreement with a civil penalty

On January 19, 1994, counsel for the Respondents submitted a response requesting that the Commission take no further action and close the file. Attempts to resolve this matter through pre-probable cause conciliation were unsuccessful and on May 17, 1994, the Commission rejected the Respondents' request to take no further action. See General Counsel's Report dated May 3, 1994. The General Counsel's probable cause brief was forwarded to the Respondents on June 2, 1994, and the Respondents' counsel submitted a reply by letter dated July 12, 1994. Attachment 1. This General Counsel's Report contains a probable cause recommendation.

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II. ANALYSIS

An analysis of the Respondents' liability in this matter is contained in the General Counsel's brief signed on June 1, 1994. The factual and legal analysis set forth in the General Counsel's brief is incorporated as if fully set forth herein.

The Respondents, in their reply letter, do not raise any new legal arguments in support of their request that the Commission take no further action. Id.

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It is uncontested that the Respondents failed to file timely two 48-hour notices for contributions totaling \$125,000. Therefore, this Office recommends that the Commission find probable cause to believe that the Alice Gilbert for Congress Committee and Lori Brode Garon, as treasurer, violated 2 U.S.C. § 434(a)(6)(A).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

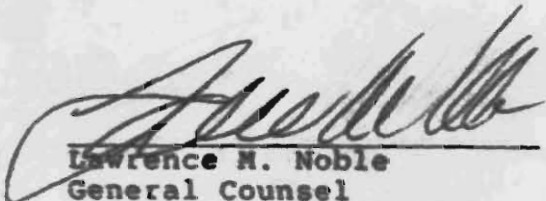
IV. RECOMMENDATIONS

1. Find probable cause to believe that the Alice Gilbert for Congress Committee and Lori Brode Garon, as treasurer, violated 2 U.S.C. § 434(a)(6)(A).

2. Approve the attached conciliation agreement and appropriate letter.

Date

8/10/94


Lawrence M. Noble
General Counsel

Attachments:

1. Reply letter
2. Conciliation Agreement

Staff assigned: Dominique Dillenseger

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Alice Gilbert for Congress and
Lori Brode Garon, as treasurer.

)
)
) MUR 3837
)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 16, 1994, the Commission decided by a vote of 5-1 to take the following actions in MUR 3837:

1. Find probable cause to believe that the Alice Gilbert for Congress Committee and Lori Brode Garon, as treasurer, violated 2 U.S.C. § 434(a)(6)(A).
2. Approve the conciliation agreement and appropriate letter, as recommended in the General Counsel's Report dated August 10, 1994.

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

Attest:

8-16-94
Date

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

Received in the Secretariat: Thurs., Aug. 11, 1994 10:59 a.m.
Circulated to the Commission: Thurs., Aug. 11, 1994 4:00 p.m.
Deadline for vote: Tues., Aug. 16, 1994 4:00 p.m.

bjr

96043735188



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

AUGUST 19, 1994

Lyn Utrecht, Esquire
Oldaker, Ryan & Leonard
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 3837
Alice Gilbert for Congress;
Lori Brode Garon, treasurer

Dear Ms. Utrecht:

On August 16, 1994, the Federal Election Commission found that there is probable cause to believe the Alice Gilbert for Congress Committee and its treasurer, Lori Brode Garon, your clients, violated 2 U.S.C. § 434(a)(6)(A), a provision of the Federal Election Campaign Act of 1971, as amended, in connection with the failure to file timely two 48-hour notices for contributions totaling \$125,000.

The Commission has a duty to attempt to correct such violations for a period of 30 to 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a conciliation agreement with a respondent. If we are unable to reach an agreement during that period, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission within ten days. I will then recommend that the Commission accept the agreement. Please make your check for the civil penalty payable to the Federal Election Commission.

If you have any questions or suggestions for changes in the enclosed conciliation agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble (JRN)
Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

96043735189

MAR 22 1995

Steven B. Fisher
16267 West Fourteen Mile Road,
Suite Number 102
Birmingham, Michigan 48025

CERTIFIED MAIL

March 21, 1995

VIA FACSIMILE AND US MAIL

TO: Dominique Dillenseger
Federal Election Commission

Dear Ms. Dillenseger,

Please find enclosed a copy of my resignation as Treasurer of the Alice Gilbert for Congress Committee (the "Committee") dated March 21, 1995 and effective immediately.

Pursuant to your letter of march 9, 1995, you indicated that the Federal Election Commission ("Commission") had made a probable cause determination last August that the Alice Gilbert for Congress Committee and Lori Brode Garon, as Treasurer, violated Federal Election Commission regulations. Your letter further stated that, even though I had not become the treasurer until January 28, 1995 (well after the alleged violations), the Commission's policy was to impute the probable cause finding against the new treasurer. Because of the action the Commission has elected to take, I have decided to resign from the treasurer's position in order to extricate myself from this imputation of civil liability.

For the reasons stated above, I am hopeful that the Commission will abandon its recent decision to pursue me personally for the Committee's alleged violations.

Respectfully,


Steven B. Fisher

CC: Alice Gilbert for Congress Committee via Lyn Utrecht, Attorney
File

96043735190

MAR 27 11:06

Steven B. Fisher
267 West Fourteen Mile Road,
Suite Number 102
Birmingham, Michigan 48025

March 21, 1995

TO: Hon. Alice L. Gilbert
3066 Middlebelt Road
Orchard Lake, MI 48323

Re; My resignation as Treasurer of Alice Gilbert for Congress.

Dear Alice,

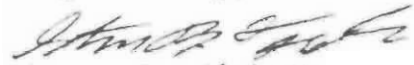
As you are aware, pursuant to your request, I completed and filed several Federal Election Commission reports for your campaign committee on January 28, 1995. Also, to facilitate timely filing of future reports, I filed an amended statement of organization for the Alice Gilbert for Congress campaign committee. This statement reflected myself as the Treasurer. It also showed the address above as the address for the campaign.

Enclosed for your information is a copy of a letter I recently received from the Federal Election Commission as a result of the actions taken on January 28, 1995.

In view of the Federal Election Commission policy regarding holding successor treasurers personally responsible for prior violations, I find that it is not possible for me to continue to be involved in this matter. Therefore, I HEREBY RESIGN AS TREASURER OF THE ALICE GILBERT FOR CONGRESS CAMPAIGN COMMITTEE EFFECTIVE IMMEDIATELY.

According to my understanding of the rules regarding the Statement of Organization as referenced on the lower portion of the form, ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS. I am providing a copy of this letter of resignation directly to the Federal Election Commission. For your convenience, I have enclosed a blank Statement of Organization FEC Form 1 for your completion (Instructions for preparing FEC Form 1 are on the back of the form) and filing with the Federal Election Commission. I have also enclosed an envelope with the proper mailing address already affixed.

Respectfully,


Steven B. Fisher

Enclosures; Copy of memo to SBF from FEC dated March 9, 1995
Blank STATEMENT OF ORGANIZATION form
Preaddressed envelope

CC: Federal Election Commission
File

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RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE FEDERAL ELECTION COMMISSION

MAY 25 8 50 AM '95

In the Matter of)

Alice Gilbert for Congress)
and Alice Gilbert, acting as treasurer)

MUR 3837

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

The Federal Election Commission ("the Commission") found probable cause to believe the Alice Gilbert for Congress Committee ("the Committee") and its treasurer, Lori Brode Garon, violated 2 U.S.C. § 434(a)(6)(A) by failing to file timely two 48-hour notices for contributions totaling \$125,000. The contributions were in the form of candidate loans. The Commission also approved a conciliation agreement with a civil penalty

Since the finding of probable cause, the treasurer, Ms. Garon, resigned and was replaced by Steven B. Fisher, the former assistant treasurer, on January 28, 1995. Mr. Fisher then resigned on March 21, 1995, upon learning about this MUR and that this Office intended to recommend probable cause against him in his capacity as the new treasurer of record. Attachment 2. In

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his letter of resignation, Mr. Fisher informed the candidate that any change in the Committee's Statement of Organization should be reported to the Commission within ten days. Id. at 2. Mr. Fisher also enclosed a blank Statement of Organization FEC Form 1 and an envelope addressed to the FEC in his letter to the candidate. Id. To date, the Committee has not named a successor treasurer and has not filed an amendment to the Statement of Organization. Accordingly, this Office will prepare a brief recommending naming the candidate, Alice Gilbert, acting as treasurer.¹

II. DISCUSSION

1. In other situations where there was no committee treasurer and the candidate appeared to be the one who was in possession of the committee's records, the Commission has named the candidate acting as treasurer. Cf. MUR 2539 Almquist for Congress (candidate named as acting treasurer when he was in possession of records and prepared a report while treasurer was hospitalized).

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Concerning the two treasurers who have resigned following the probable cause finding, in accordance with Commission policy, this

Office intends to send the candidate a supplemental probable cause brief indicating that we are recommending a finding of probable cause against Alice Gilbert, acting as treasurer for the Alice Gilbert for Congress committee.

Finally, because the Committee has failed to amend its Statement of Organization within 10 days of the resignation of the treasurer on March 21, 1995, this Office recommends that the Commission find reason to believe that the Alice Gilbert for Congress Committee and Alice Gilbert, acting as treasurer, violated 2 U.S.C. § 433(c). A Factual and Legal Analysis concerning this violation is attached.

II. RECOMMENDATIONS

1. Reject the counteroffer from Alice Gilbert for Congress and Alice Gilbert, acting as treasurer.

2. Find reason to believe that Alice Gilbert for Congress and Alice Gilbert, acting as treasurer, violated 2 U.S.C. § 433(c).

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

Lawrence M. Noble
General Counsel

Date

5/24/95

BY:

Lois G. Lerner
Associate General Counsel

Attachments

1. Counteroffer, dated April 17, 1995
2. Letter from Steven Fisher, dated March 21, 1995
3. Factual and Legal Analysis

Staff Assigned: Dominique Dillenseger

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Alice Gilbert for Congress and
Alice Gilbert, acting as treasurer.

MUR 3837

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on May 31, 1995, the Commission decided by a vote of 5-1 to take the following actions in MUR 3837:

1. Reject the counteroffer from Alice Gilbert for Congress and Alice Gilbert, acting as treasurer.
2. Find reason to believe that Alice Gilbert for Congress and Alice Gilbert, acting as treasurer, violated 2 U.S.C. § 433(c).
3. Approve the Factual and Legal Analysis and the appropriate letter, as recommended in the General Counsel's Report dated May 24, 1995.

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

Attest:

5-31-95
Date

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

Received in the Secretariat: Thurs., May 25, 1995 8:59 a.m.
Circulated to the Commission: Thurs., May 25, 1995 11:00 a.m.
Deadline for vote: Wed., May 31, 1995 4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 12, 1995

Ms. Lyn Utrecht, Esquire
Oldaker, Ryan & Leonard
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 3837
Alice Gilbert for Congress;
Alice Gilbert, acting as treasurer

Dear Ms. Utrecht:

On May 31, 1995, the Federal Election Commission ("the Commission") found reason to believe that Alice Gilbert for Congress and Alice Gilbert, acting as treasurer, violated 2 U.S.C. § 433(c), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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 your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, 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 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.

Celebrating the Commission's 20th Anniversary

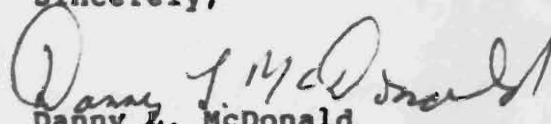
YESTERDAY TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

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Ms. Lyn Utrecht, Esquire
Page 2

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 investigation to be made public. If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,


Danny L. McDonald
Chairman

Enclosure
Factual and Legal Analysis

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The FEC in this case
has not named a success
or failure.

action as a result.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Alice Gilbert for Congress and
Alice Gilbert, acting as treasurer

MUR: 3837

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

The Federal Election Campaign Act of 1971, as amended, ("the Act") requires each authorized principal campaign committee of a federal candidate to file a Statement of Organization. 2 U.S.C. § 433(a). Any changes in information previously submitted in the Statement of Organization shall be reported no later than 10 days after the date of the change. 2 U.S.C. § 433(c).

On January 28, 1995, Lori Brode Garon resigned as treasurer of record for the Alice Gilbert for Congress Committee and was replaced by Steven B. Fisher, the former assistant treasurer. Mr. Fisher resigned from that position on March 21, 1995. In his letter of resignation, Mr. Fisher informed the candidate that any change in the Committee's Statement of Organization should be reported to the Commission within ten days. Mr. Fisher also enclosed a blank Statement of Organization FEC Form 1 and an envelope addressed to the FEC in his letter to the candidate. To date, the Committee has not named a successor treasurer and has not filed an amendment to the Statement of Organization. Therefore, there is reason to believe that Alice Gilbert for Congress Committee and Alice Gilbert, acting as treasurer, violated 2 U.S.C. § 433(c).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 16, 1995

Ms. Lyn Utrecht, Esquire
Oldaker, Ryan & Leonard
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 3837
Alice Gilbert for Congress;
Alice Gilbert, acting as treasurer

Dear Ms. Utrecht:

On August 16, 1994, the Federal Election Commission ("the Commission") found probable cause to believe that Alice Gilbert for Congress and Lori Brode Garon, as treasurer, violated 2 U.S.C. § 434(a)(6)(A). Since the finding of probable cause, Ms. Garon resigned as treasurer and was replaced by Steven B. Fisher, the former assistant treasurer, on January 28, 1995. Mr. Fisher then resigned on March 21, 1995. To date, the Committee has not named a successor treasurer and has not filed an amendment to the Statement of Organization.

When a committee changes treasurer after the Commission has made a probable cause finding, the Office of the General Counsel, in accordance with Commission policy, proceeds to recommend probable cause against the new treasurer. Accordingly, this Office intends to recommend probable cause against the candidate, Alice Gilbert, acting as treasurer.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

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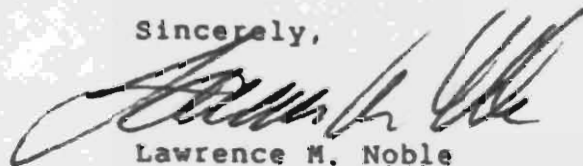
Ms. Lyn Utrecht, Esquire
Page 2

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Finally, the Commission reviewed and rejected the counteroffer you submitted on April 17, 1995, regarding the violation of 2 U.S.C. § 434(a)(6)(A). Should you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosures

Supplemental Brief

General Counsel's Brief dated June 1, 1994

96043735201

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3837
Alice Gilbert for Congress)
Alice Gilbert, acting as treasurer)

GENERAL COUNSEL'S SUPPLEMENTAL BRIEF

On August 16, 1994, the Federal Election Commission ("the Commission") found probable cause to believe that Alice Gilbert for Congress and Lori Brode Garon, as treasurer, violated 2 U.S.C. § 434(a)(6)(A). On January 28, 1995, Lori Brode Garon resigned as treasurer of record for Alice Gilbert for Congress and was replaced by Steven B. Fisher, the former assistant treasurer. Mr. Fisher resigned from that position in a letter to the candidate dated March 21, 1995. The Committee has not amended its Statement of Organization to reflect its successor treasurer.

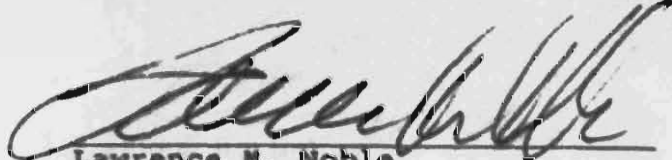
The enclosed General Counsel's probable cause brief dated June 1, 1994, which states the position of the General Counsel on the legal and factual issues of this case, is incorporated herein by reference. In accordance with Commission policy, this Office recommends that the Commission find there is probable cause to believe that Alice Gilbert for Congress and Alice Gilbert, acting as treasurer, violated 2 U.S.C. § 434(a)(6)(A) by failing to report, within 48 hours of their receipt, two campaign contributions of \$1,000 or more which were received after the 20th day, but more than 48 hours before the general election.

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GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that Alice Gilbert for Congress and Alice Gilbert, acting as treasurer, violated 2 U.S.C. § 434(a)(6)(A).

6/16/95
Date


Lawrence M. Noble
General Counsel

Staff assigned: Dominique Dillenseger

96043735203

THE FEDERAL ELECTION COMMISSION

In the Matter of)
Alice Gilbert for Congress Committee) MUR 3837
and Lori Brode Garon, as treasurer)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). On December 3, 1993, the Commission found reason to believe that the Alice Gilbert for Congress Committee and Lori Brode Garon, as treasurer, ("the Respondents") violated 2 U.S.C. § 434(a)(6)(A) by failing to file timely two (2) forty-eight (48) hour notifications ("48-hour notices") for contributions totaling \$125,000.

This Office subsequently engaged in preprobable cause conciliation negotiations, but was unable to reach an agreement with the Respondents. This brief sets forth the General Counsel's position on the factual and legal issues in this matter and the recommendation that there is probable cause to believe a violation has occurred. 11 C.F.R. § 111.16(a).

II. ANALYSIS

The Federal Election Campaign Act of 1971, as amended, ("the Act") requires principal campaign committees of candidates for federal office to notify in writing either the Secretary of the Senate, the Clerk of the U.S. House of Representatives or the

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Commission, as appropriate, and the Secretary of State, of each contribution totaling \$1,000 or more received by any authorized committee of the candidate after the 20th day, but more than 48 hours before any election. 2 U.S.C. § 434(a)(6)(A). The Act further requires notification to be made within 48 hours after the receipt of the contribution and to include the name of the candidate and office sought, the date of receipt, the amount of the contribution, and the identification of the contributor. Id. The notification of these contributions shall be in addition to all other reporting requirements. 2 U.S.C. § 434(a)(6)(B). A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. 2 U.S.C. § 431(8)(A) and 11 C.F.R. § 100.7(a)(1)(B).

Under 2 U.S.C. § 432(a), every political committee shall have a treasurer. The treasurer's responsibilities are set forth in Sections 432 and 434 of the Act. For example, 2 U.S.C. § 432(c) provides a list of all records of which the treasurer is required to keep an account. In performing recordkeeping duties, the treasurer shall use best efforts to obtain, maintain and submit the required information and shall keep a complete record of such efforts. 11 C.F.R. § 102.9(d). Section 434(a)(1) of the Act provides that the treasurer shall file reports of receipts and disbursements and shall sign each report. 2 U.S.C. § 434(b) sets forth the requirements for the contents of each report required to be filed under Section 434.

According to its Statement of Organization filed with the Commission, Alice Gilbert for Congress is the principal campaign

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committee of Alice L. Gilbert and Lori Brode Garon is the treasurer of the Committee.

The Primary Election in the state of Michigan was held on August 4, 1992. Pursuant to the Act, the Respondents were required to notify the Commission, in writing, of all contributions of \$1,000 or more received from July 16 to August 1, 1992, within 48 hours of their receipt. A review of Schedule C of the Committee's 1992 October Quarterly Report identifies two contributions of \$1,000 or more during this time period: a \$100,000 loan from the candidate received on July 16, 1992, and a \$25,000 loan from the candidate received on July 29, 1992, for a total of \$125,000. The Committee did not submit 48-hour notices for either of these contributions, in violation of 2 U.S.C. § 434(a)(6)(A).

Although the Respondents admit they failed to file the required 48-hour notices for the candidate loans, they contend that this was an unintentional mistake and that they were unaware that the requirement applied to candidate loans. The Committee did file timely fourteen 48-hour notices for contributions not involving candidate loans. In addition, Steven B. Fisher, the assistant treasurer for the Committee, alleges that the treasurer failed to inform him of this requirement.

First, the Respondents' contention that they were unaware that candidate loans were considered contributions for purposes of 48-hour notices does not relieve them of responsibility in this matter. Not only are the Respondents charged with knowledge of the law, but the evidence shows that the Commission made the

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candidate and the Committee "aware" of the 48-hour reporting requirements, including its specific application to candidate loans, through the following: (1) a form letter sent to all candidates in the 1992 election cycle shortly after they registered with the Federal Election Commission, which explicitly states that the 48-hour reporting rule applies to candidate loans; (2) general instructional materials such as the Campaign Guide and an informational videotape which were sent with the form letter; and (3) the prior notice sent to the Alice Gilbert for Congress Committee on June 29, 1992, which clearly stated that principal campaign committees are required to submit 48-hour notices for contributions and loans from the candidate received during the period July 16 through August 1, 1992. In fact, the Respondents admit receipt of the instructional form letter and Mr. Fisher, the assistant treasurer, admits that the campaign manager advised him of this requirement.

Further, although the Respondents argue that the treasurer failed to inform the assistant treasurer adequately of the 48-hour notice requirements, they do not explain what was inadequate about the campaign manager's instructions or the instructional notifications sent by the Commission. In addition, it is clear that the Commission cannot be held responsible for the Committee's apparent lack of organization or training, as the Respondents suggest. The treasurer's failure to ensure proper reporting by either failing to inform or instruct the assistant treasurer clearly does not demonstrate "best efforts" to ensure that the Committee reports comply with FEC rules.

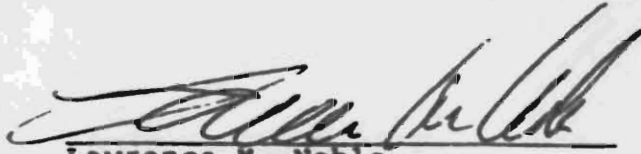
For the foregoing reasons, this Office recommends that the Commission find there is probable cause to believe that the Alice Gilbert for Congress Committee and Lori Brode Garon, as treasurer, violated 2 U.S.C. § 434(a)(6)(A) by failing to report, within 48 hours of their receipt, two campaign contributions of \$1,000 or more which were received after the 20th day, but more than 48 hours before the general election.

III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that the Alice Gilbert for Congress Committee and Lori Brode Garon, as treasurer, violated 2 U.S.C. § 434(a)(6)(A).

Date

6/1/99



Lawrence M. Noble
General Counsel

Staff assigned: Dominique Dillenseger

96043735208

OLDAKER, RYAN & LEONARD

ATTORNEYS AT LAW

818 CONNECTICUT AVENUE, N.W.

SUITE 1100

WASHINGTON, D.C. 20006

(202) 728-1010

FACSIMILE (202) 728-4044

June 20, 1995

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

Re: MUR 3837
Alice Gilbert for Congress;
Alice Gilbert, acting as treasurer

Dear Mr. Noble:

This is a request, on behalf of the above named Respondent, for an extension of time to respond to the notification of the General Counsel's Supplemental Brief, General Counsel's Brief and the proposed conciliation agreement

Our office received the Commission's notification on June 19, 1995, making the response due on July 5th, 1995. However, due to other deadlines facing Counsel, we will need additional time to sufficiently respond to this matter. We are requesting an extension of twenty days from the original due date, making the response due on July 24, 1995.

We would greatly appreciate your assistance in granting us this additional time to respond.

Sincerely,



Lyn Utrecht

JUN 23 12 06 PM '95

FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL

96043735209



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 26, 1995

Ms. Lyn Utrecht, Esq.
Oldaker, Ryan & Leonard
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 3837
Alice Gilbert for Congress
and Alice Gilbert, acting as
treasurer

Dear Ms. Utrecht:

This is in response to your letter dated June 20, 1995, which we received on June 21, 1995, requesting an extension of 20 days until July 24, 1995, to respond to the General Counsel's Brief. 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 24, 1995.

As I discussed with your office, the draft conciliation agreement that you received was sent prematurely, has not been approved by the Commission, and should be disregarded. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Richard M. Denholm II
Attorney

96043735210

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

SEP 5 3 42 PM '95

In the Matter of)

Alice Gilbert for Congress)
and Alice Gilbert, acting as treasurer)

MUR 3837

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On May 31, 1995, the Federal Election Commission ("the Commission") found reason to believe that Alice Gilbert for Congress and Alice Gilbert, acting as treasurer ("the Respondents") violated 2 U.S.C. § 433(c) for failure to amend their Statement of Organization within 10 days of the resignation of the treasurer on March 21, 1995. At the same time, the Commission rejected a counteroffer from the Respondents relating to violations of 2 U.S.C. 434(a)(6)(A) by the Committee.

The Commission had earlier, on August 16, 1994, found probable cause to believe that Alice Gilbert for Congress and its treasurer, Lori Brode Garon, violated 2 U.S.C. § 434(a)(6)(A) by failing to file timely two 48-hour notices for contributions (in the form of candidate loans) totaling \$125,000. The Commission also had approved a conciliation agreement with a civil penalty

After this finding of probable cause, the treasurer, Ms. Garon, resigned and was replaced by Steven B. Fisher, the former assistant treasurer, on January 28, 1995. Mr. Fisher then resigned on March 21, 1995. To date, the Committee has not named a successor treasurer and has not filed an amendment to the Statement of Organization.

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In accordance with Commission policy, this Office prepared a supplemental brief recommending naming the candidate, Alice Gilbert acting as treasurer, as a respondent. The General Counsel's earlier probable cause brief and a supplemental brief were forwarded to the Respondents on June 16, 1995. Counsel for the Respondents submitted separate replies to the reason to believe finding and to the briefs. (Attachments 1-2.) This General Counsel's Report contains a probable cause recommendation with regard to the addition of Alice Gilbert as a respondent and also recommends approval of a revised conciliation agreement.

II. LEGAL AND FACTUAL ANALYSIS

An analysis of the Respondents' liabilities in this matter is contained in the General Counsel's Report dated May 24, 1995, the General Counsel's brief signed on June 1, 1994, and the General Counsel's supplemental brief signed on June 16, 1995. The factual and legal analyses set forth in the General Counsel's briefs and in the General Counsel's Report are incorporated as if fully set forth herein.

The Respondents' reply to the most recent reason to believe finding and their reply to the briefs are discussed separately below.

A. VIOLATION OF 2 U.S.C. § 433(c)

1. STATEMENT OF THE CASE

On January 28, 1995, Lori Brode Garon resigned as treasurer of record for Alice Gilbert for Congress and was replaced by Steven B. Fisher, the former assistant treasurer. Mr. Fisher resigned from that position on March 21, 1995. In his letter of

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resignation, Mr. Fisher informed the candidate that any change in the Committee's Statement of Organization should be reported to the Commission within ten days. Mr. Fisher also enclosed a blank Statement of Organization FEC Form 1 and an envelope addressed to the FEC in his letter to the candidate. To date, the Committee has not named a successor treasurer and has not filed an amendment to the Statement of Organization.

In the reply letter to the Commission's reason to believe finding in this regard, counsel for the Respondents contends that:

(1) the reason to believe finding is "unfair" given that the "pending enforcement matter with the Commission could result in a

civil penalty which the Commission expects to be paid personally by a newly appointed treasurer"; (2) it is "virtually impossible at this point in time for the Committee to appoint a new treasurer" and "completely unreasonable for any person to accept this position since the FEC apparently will proceed personally against anyone so designated"; (3) the Committee does not need a treasurer because Alice Gilbert is no longer a candidate and the Committee is inactive except for this enforcement action; (4) "[t]here is no statutory authority for the Commission to appoint anyone as acting treasurer"; (5) "Congress specifically enacted 2 U.S.C. §§ 432(a), 432(e)(2) and 434, to shield the candidate from potential liability under the Act for routine activities of the Committee"; and (6) "[i]t would be contrary to the Act to appoint Alice Gilbert as treasurer for the purpose of assuming liability for actions committed by the Committee, not the candidate," and "unjust" for Alice Gilbert to

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pay a civil penalty given that the Committee will not be able to repay the \$214,005.31 debt owed to her. (Attachment 1.) Counsel states that for these reasons, Alice Gilbert will not accept the position of treasurer and will resign if the Commission appoints her. Id. at 1.

2. ANALYSIS

Counsel's contentions are not supported by the Act, Commission regulations, and Commission practice. Contrary to counsel's assertion, the Committee does need a treasurer. The Commission requires all committees involved in an ongoing enforcement matter, even those which are inactive, to continue to maintain records and file reports until the matter under review is resolved. Because the Act requires political committees to designate a treasurer to perform these functions, 2 U.S.C. §§ 432 and 434, this Committee must also designate an individual responsible for performing these functions. Along the same lines, the Act requires a committee to amend its Statement of Organization whenever there is a change in treasurer, assistant treasurer, or custodian of records for the committee. 2 U.S.C. § 433(c); 11 C.F.R. § 102.7. Any change in information previously submitted in a Statement of Organization must be reported to the Commission no later than ten days after the change. By this requirement, the Act and Commission regulations ensure that the appropriate individual is held accountable for committee violations.

Similarly, counsel's contention that the Commission has no authority to name anyone as acting treasurer is also incorrect.

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Nothing in the Act and the Commission's regulations precludes the Commission from naming individuals or for that matter candidates as acting as treasurer. In fact, the Commission has in other cases named candidates as acting as treasurers in situations where there was no committee treasurer and the candidate assumed the duties of treasurer. See, e.g., MUR 2539 (Commission found candidate to be acting as treasurer where the candidate was in possession of committee records and prepared a report while treasurer was hospitalized); MUR 2691 (Commission found candidate to be acting as treasurer, and therefore responsible for violations of the Act, when he signed most of his committee's reports and referred to the treasurer of record as the "initial treasurer"); and MUR 3921 (Commission found candidate to be acting as treasurer where the treasurer was absent through most of the campaign and the candidate signed the Committee's reports and acted as the Committee's spokesperson during the audit fieldwork).

Finally, counsel's assertion that the Act "shields" candidates from potential liability is wrong as a matter of law. Candidates are not only subject to the same requirements and restrictions of the Act as any other persons, 2 U.S.C. § 431(11), but are expressly prohibited from violating certain sections of the Act. See, e.g., 2 U.S.C. § 441a(f).

When the treasurer of record in the instant case informed Alice Gilbert of his resignation, the Committee was left with no treasurer and Alice Gilbert effectively became custodian of records and acting treasurer for the Committee. As such and pending the designation of a new treasurer, Alice Gilbert was

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responsible for maintaining committee records and for filing all required reports, including any required amendment to the Statement of Organization. By not filing this required amendment, the Committee and its candidate acting as treasurer violated 2 U.S.C. § 433(c).

B. VIOLATION OF 2 U.S.C. § 434(a)(6)(A): PROBABLE CAUSE DETERMINATION RE. ALICE GILBERT

1. STATEMENT OF THE CASE

In reply to the General Counsel's briefs, counsel reiterates that Alice Gilbert does not accept the position of treasurer and maintains that Respondents' earlier counteroffer

which was rejected by the Commission, is "right in line with the circumstances of this case." (Attachment 2). Counsel does not make any new legal arguments in support of this latter position, except to point out that Alice Gilbert is a Circuit Court judge in Michigan and is precluded by the Michigan Code of Judicial Conduct "from raising any funds for political purposes, including retirement of her own debt." Id. at 2 and 4. In conclusion, counsel contends that it is unfair for Respondents to pay a penalty "for an inadvertent error," and that "the Committee has no assets and the candidate is unable to raise additional funds both as a practical matter and under Michigan law." Id.

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2. ANALYSIS

It is Commission policy that a successor treasurer be named as a respondent in his or her official capacity in an enforcement matter alleging violations of the Act which occurred during the tenure of a prior treasurer. Further, when a committee changes its treasurer after the Commission has made a probable cause finding, the General Counsel, in accordance with Commission policy, recommends that the Commission find probable cause to believe with regard to the new treasurer. Although Canon 7 of the Code of Judicial Conduct appears to preclude Alice Gilbert from soliciting or accepting campaign funds, it does not appear to preclude her from maintaining records and filing reports with the Commission while acting as treasurer.

In light of the Commission's previous finding of probable cause to believe that Alice Gilbert for Congress violated 2 U.S.C. § 434(a)(6)(A), and Alice Gilbert's current position as acting treasurer of the Committee, this Office recommends that the Commission find probable cause to believe that Alice Gilbert, acting as treasurer, violated 2 U.S.C. § 434(a)(6)(A).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

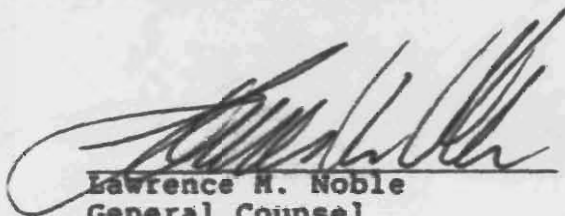
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IV. RECOMMENDATIONS

1. Find probable cause to believe that Alice Gilbert, acting as treasurer, violated 2 U.S.C. § 434(a)(6)(A).
2. Approve the attached conciliation agreement and appropriate letter.

Date

9/5/95


Lawrence M. Noble
General Counsel

Attachments:

1. Reply Letter, dated June 29, 1995
2. Reply Letter, dated July 24, 1995
3. Conciliation Agreement

Staff assigned: Dominique Dillenseger

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20541

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS / LISA R. DAVIS *L.R. Davis*
COMMISSION SECRETARY

DATE: SEPTEMBER 11, 1995

SUBJECT: MUR 3837 - GENERAL COUNSEL'S REPORT
DATED SEPTEMBER 5, 1995.

The above-captioned document was circulated to the
Commission on WEDNESDAY, SEPTEMBER 6, 1995 at 11:00 a.m.

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

Commissioner Aikens	_____
Commissioner Elliott	_____
Commissioner McDonald	XXX
Commissioner McGarry	XXX
Commissioner Potter	_____
Commissioner Thomas	XXX

This matter will be placed on the meeting agenda
for TUESDAY, SEPTEMBER 12, 1995.

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

96043735219

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Alice Gilbert for Congress and) MUR 3837
Alice Gilbert, acting as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on September 12, 1995, do hereby certify that the Commission decided by a vote of 6-0 to reject the recommendations in the General Counsel's September 5, 1995 report on MUR 3837 and instead direct the Office of General Counsel to return to the respondent with an offer to conciliate on the basis of the current findings

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

Attest:

9-14-95
Date

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

96043735220

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Alice Gilbert for Congress) MUR 3837
and Alice Gilbert, acting as treasurer)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On September 12, 1995, The Federal Election Commission ("the Commission") rejected the recommendations in the General Counsel's September 5, 1995, report (1) to find probable cause to believe that Alice Gilbert, acting as treasurer of Alice Gilbert for Congress, violated 2 U.S.C. § 434(a)(6)(A) and (2) to approve a conciliation agreement including this finding. The Commission, instead, directed the Office of General Counsel to offer to conciliate

on the basis of the current findings, namely, the probable cause finding that Alice Gilbert for Congress and its treasurer violated 2 U.S.C. § 434(a)(6)(A) and the reason to believe finding that Alice Gilbert for Congress and Alice Gilbert, acting as treasurer, violated 2 U.S.C. § 433(c).

Attached is a revised conciliation agreement which incorporates the changes directed by the Commission. This Office recommends that the Commission approve the attached conciliation agreement.

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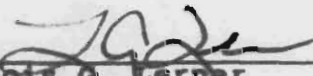
II. RECOMMENDATION

Approve the attached conciliation agreement and the appropriate letter.

Lawrence M. Noble
General Counsel

Date 10/13/95

BY:


Lois G. Lerner
Associate General Counsel

Attachment
Conciliation Agreement

Staff Assigned: Dominique Dillenseger

96043735222

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Alice Gilbert for Congress and
Alice Gilbert, acting as treasurer.

)
)
) MUR 3837
)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on October 17, 1995, the Commission decided by a vote of 5-0 to approve the conciliation agreement and the appropriate letter, as recommended in the General Counsel's Memorandum dated October 12, 1995.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Potter did not cast a vote.

Attest:

10-17-95
Date

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

Received in the Secretariat: Fri., October 13, 1995 11:13 a.m.
Circulated to the Commission: Fri., October 13, 1995 12:00 p.m.
Deadline for vote: Mon., October 16, 1995 4:00 p.m.

1rd

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 20, 1995

Ms. Lyn Utrecht, Esquire
Oldaker, Ryan & Leonard
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 3837
Alice Gilbert for Congress;
Alice Gilbert, acting as treasurer

Dear Ms. Utrecht:

As you know, on May 31, 1995, the Federal Election Commission ("the Commission") reviewed and rejected the counteroffer you submitted on behalf of Alice Gilbert for Congress and Alice Gilbert, acting as treasurer. In an effort to resolve this matter, however, the Commission, on October 17, 1995, approved a revised conciliation agreement with the following changes:

Enclosed herewith is a conciliation agreement incorporating these changes which we submit for signature. The Commission is still hopeful that this matter can be settled through a conciliation agreement. Because of the time which has elapsed since the Commission's findings, you should submit your response to the General Counsel's Office within 15 days of your receipt of this letter. Should you have any further questions, please contact me at (202) 219-3690.

Sincerely,

Dominique Dillenseger
Attorney

Enclosure
Conciliation Agreement

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

96043735224

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
WASHINGTON, D.C. 20543

MAY 13 4 23 PM '96

In the Matter of)

MUR 3837

Alice Gilbert for Congress)
and Alice Gilbert, acting as treasurer)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On, August 16, 1994, the Federal Election Commission ("the Commission") found probable cause to believe that Alice Gilbert for Congress and its treasurer, Lori Brode Garon, violated 2 U.S.C. § 434(a)(6)(A) by failing to file timely two 48-hour notices for contributions (in the form of candidate loans) totaling \$125,000. The Commission also approved a conciliation agreement with a civil penalty. After this finding of probable cause, the treasurer, Ms. Garon, resigned and was replaced by Steven B. Fisher, the former assistant treasurer, on January 28, 1995. Mr. Fisher then resigned on March 21, 1995. The Committee did not name a successor treasurer and did not file an amendment to the Statement of Organization.

On May 31, 1995, the Commission found reason to believe that Alice Gilbert for Congress and Alice Gilbert, acting as treasurer ("the Respondents") violated 2 U.S.C. § 433(c) for failure to amend their Statement of Organization within 10 days of the resignation of the treasurer on March 21, 1995. The Commission also rejected a counteroffer from the Respondents relating to the 2 U.S.C. 434(a)(6)(A) violations.

On September 12, 1995, the Commission rejected the recommendations in the General Counsel's Report, dated September 5, 1995, to find probable cause to believe that Alice Gilbert, acting as treasurer of Alice Gilbert for Congress, violated 2 U.S.C.

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§ 434(a)(6)(A). The Commission, instead, directed the Office of General Counsel to offer to conciliate on the basis of the current findings -- namely, the probable cause finding that Alice Gilbert for Congress and its treasurer violated 2 U.S.C. § 434(a)(6)(A) and the reason to believe finding that Alice Gilbert for Congress and Alice Gilbert, acting as treasurer, violated 2 U.S.C. § 433(c). Accordingly, on October 17, 1995, the Commission approved a revised conciliation agreement

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Although this Office would ordinarily recommend that the Commission authorize civil suit in this matter, it does not believe that this is a realistic alternative here given that the Committee is defunct it has no assets or treasurer, and the Commission has not made a probable cause finding against the candidate acting as treasurer. Therefore, absent

reconsideration of the probable cause recommendation against the candidate, this Office recommends that the Commission send out admonishment letters and close the file in this matter.

III. RECOMMENDATIONS

1. Reject the attached conciliation agreement submitted on behalf of the Alice Gilbert for Congress Committee.
2. Close the file.
3. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

Date

5/13/96

BY:

[Signature]

Lois G. Lerner
Associate General Counsel

Attachments

1. Respondents' Letter, dtd November 8, 1995
2. Respondents' Letter/Conciliation Agreement, dtd April 17, 1996.

Staff Assigned: Dominique Dillenseger

96043735228



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/ LISA R. DAVIS 
COMMISSION SECRETARY

DATE: MAY 17, 1996

SUBJECT: MUR 3837 - GENERAL COUNSEL'S REPORT
DATED MAY 13, 1996.

The above-captioned document was circulated to the Commission
on: TUESDAY, MAY 14, 1996 at 11:00 a.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> </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, JUNE 4, 1996

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

96043735229

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Alice Gilbert for Congress) MUR 3837
and Alice Gilbert, acting as)
treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on June 11, 1996, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 3837:

1. Reject the conciliation agreement submitted on behalf of the Alice Gilbert for Congress Committee, as recommended in the General Counsel's May 13, 1996 report.
2. Close the file.
3. Approve the appropriate letters as recommended in the General Counsel's May 13, 1996 report.

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

Attest:

6-11-96

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

96043735230



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 20, 1996

Ms. Lyn Utrecht, Esquire
Oldaker, Ryan, Phillips & Utrecht
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 3837
Alice Gilbert for Congress;
Alice Gilbert, acting as treasurer

Dear Ms. Utrecht:

The Federal Election Commission ("the Commission") found probable cause to believe that Alice Gilbert for Congress and its treasurer violated 2 U.S.C. § 434(a)(6)(A) and entered into conciliation. On June 11, 1996, the Commission rejected the counter-proposed conciliation agreement you submitted on behalf of Alice Gilbert for Congress and Alice Gilbert, acting as treasurer. After considering the circumstances of this matter, the Commission also determined to take no further action and closed its file.

Under the Act, candidates are responsible for designating their political committees and each committee must have a treasurer to perform recordkeeping and reporting functions and to sign committee reports. 2 U.S.C. §§ 432 and 434. Moreover, each committee must file a Statement of Organization which includes the name and address of the committee's treasurer. 2 U.S.C. § 433. Any change to the Statement of Organization must be reported within 10 days after the change. 2 U.S.C. § 433(c). On March 21, 1995, the treasurer of Alice Gilbert for Congress resigned from that position. In his letter of resignation, the treasurer informed the candidate, Alice Gilbert, that any change in the committee's Statement of Organization should be reported to the Commission within ten days. To date, Alice Gilbert has not named a successor treasurer, and has not filed a Statement of Organization to reflect the change in treasurer. Moreover, your clients have submitted the 1995 Mid-Year Report without any signature and have failed to file the 1995 End Year Report.

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The Commission reminds your clients that committee reports must be signed by the treasurer identified in the committee's Statement of Organization. Accordingly, if Alice Gilbert for Congress wishes to terminate its reporting obligation and otherwise complies with the 2 U.S.C. § 433(d) termination requirements, it must file an amended Statement of Organization FEC Form 1 reflecting the name of its treasurer and a completed termination report signed by that treasurer.

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,

Dominique Dillenseger
Dominique Dillenseger
Attorney

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3837

DATE FILMED 7-26-96 CAMERA NO. 2

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