Paul E. Sullivan, Esq.
Attorney-at-Law

The Singletary Mansion
1565 The Alameda
San Jose, CA 95126

October 20, 1997

Federal Election Commission
General Counsel's Office
999 E St NW
Washington, D.C. 20463

Attn.: Thomas J. Andersen, Esq.

RE: MUR 4305

Dear Mr. Andersen:

Enclosed, please find Respondent's reply to your probable cause brief in the above referenced matter.

Very truly yours,

Paul E. Sullivan
Counsel for Respondents

cc: Chairman McGarry
Vice Chairman Aikens
Commissioner Elliott
Commissioner McDonald
Commissioner Thomas

BEFORE THE FEDERAL ELECTION COMMISSION

IN RE: Forbes, Inc. Forbes for President, Inc. et al	)	MUR 4305: Response to OGC Probable Cause Brief

Pursuant to 2 U.S.C. § 437g(a)(3) Forbes, Inc., Forbes for President Committee, Inc., ("FPC") and Malcolm S. Forbes, Jr., ("Respondents") file this consolidated response to the Federal Election Commission ("FEC" or "Commission") general counsel's probable cause brief ("PC Brief"), in the above referenced matter.

I. Introduction

This matter arose as a result of an outside complaint filed by one Charles Givens on February 12, 1996. ("Complaint") Mr. Forbes, in his individual capacity was the only Respondent served with a copy of the Complaint and a response was filed with the Commission on his behalf on April 5, 1996. The Commission found reason to believe against all Respondents on December 3, 1996[1] and propounded interrogatories and subpoenas for documents to the Respondents. On March 21, 1997 each of the Respondents filed a response brief along with answers to interrogatories and documents requested by subpoena ("RTB Brief"). On August 22, 1997, Respondents received the PC Brief making recommendations that Forbes for President Committee, Inc., Forbes, Inc., and Malcolm S. Forbes, Jr. violated 2 U.S.C. § 441b(a) and that Forbes for President Committee, Inc., violated 2 U.S.C. § 434(b)(2)(A).

---

[1]Contrary to the requirements of 2 U.S.C. §437g(a)(1), neither Forbes, Inc. nor FPC were provided a copy of the Complaint prior to the Commission finding RTB. Those respondents continue to object to this procedural defect since it prevented an opportunity for them to respond, which may well have terminated the matter prior to the RTB finding.

A substantial part of the Respondents' legal analysis and arguments pertaining to the issues of this matter were set forth in the RTB Brief for Forbes, Inc. Rather than reiterate those specific arguments, Respondents will cross reference to them in that Brief.

II. Factual Summary .

The facts, few as there are, as set forth in the PC Brief, pages 5-7, are not in dispute. However, Respondents do take exception to that portion of the factual summary commencing at page 6 with the paragraph, "During the period in which Mr. Forbes actively campaign..." through the end of that paragraph at page 7. These statements are not factual in nature, but rather argumentative. Respondents dispute the apparent factual point which those portions of the PC Brief are attempting to make.

As will be expounded upon below, the PC Brief alleges that, "...themes that he (Mr. Forbes) promoted in a campaign context were given similar treatment in his columns." (PC Brief p.6) This is not a factual statement, but rather conclusionary and disputed by Respondent (See pp.5-9 *infra*). Little, if any, factual evidence is proffered by the PC Brief to substantiate how these campaign "themes" were selected by OGC. The only document or similar evidence referenced to establish the "themes" allegedly promoted in the campaign is Mr. Forbes' September 22, 1995 presidential announcement speech (PC Brief p.6). But for this announcement speech[2], the PC Brief offers no evidence, nor even a reference, to any other FPC, speech press release, issue paper, etc., justifying

[2]The PC Brief makes only one generic reference to that speech and did not attach or incorporate that document into its PC Brief. However, see Exhibit "A" attached hereto for a full and complete copy of the September 22, 1995 speech. Hereinafter, "Ann, Sp."

the selection of those issues as campaign "themes"[3]. If the general counsel had reviewed or relied upon other factual materials in reaching its selection of these themes, it had an obligation to present those documents in the PC Brief to enable rebuttal by Respondent. Failure to present such evidence causes the September 22, 1995 presidential announcement speech to be the single document of evidence upon which the general counsel must now factually rely to establish the so-called campaign "themes." That, as we will present below, is woefully lacking.

III. SUMMARY OF ARGUMENTS

The Commission need not resolve the issue of the applicable standard of review to make a decision to close this matter. The PC Brief fails to present any credible *factual* basis upon which to claim any issue measures up to a "theme" and, even by the "campaign related" standard, that lack of a foundation precludes the PC Brief from contending any of the comments in "Fact and Comment" were also "themes" promoted in the campaign.

---

[3] On this point, the PC Brief makes only unsubstantiated generic statements. For example, "As previously mentioned, Mr. Forbes discussed, *both on the campaign trail* and in 'Fact and Comment', his positions on taxes, term limits, a gold standard, and U.S. involvement in Bosnia". (PC Brief p.10; footnote omitted; emphasis added) That statement is factually wrong since there was no previous discussion in the PC Brief of any evidence showing what was discussed on the "campaign trail" by Mr. Forbes. That statement and the PC Brief's attempt to list campaign themes is conclusionary and without foundation (See pp.5-9 *infra*) In addition, the PC Brief fails to articulate the distinction between a "campaign theme" and those issues merely "discussed on the campaign trail". Surely the PC Brief does not attempt to argue *every issue* discussed or referenced during the campaign constitutes a "campaign theme." Yet the two concepts are used interchangeably in the PC Brief (compare use of term campaign "themes", PC Brief pp.6, 11; footnote 10 at p.11, and "campaign issues" PC Brief pp. 8,10). Failure to establish the criteria upon which to distinguish "themes" from "campaign issues" is yet another failure of the PC Brief. Absent a distinction, the PC Brief would require that *any* issue (e.g.; as ridiculous as the 1992 MTV "issue": "Does President Clinton wear boxers or briefs?") would become a "theme"and thus precluded from comment by the "Fact and Comment" column. The vagueness of such a standard can only result in an arbitrary enforcement and since it pertains to political speech, on its face must fall for that reason alone (see discussion at pp.22-26 *infra*).

The only document relied upon in the PC Brief to evidence issues which measure up to "themes" is Mr. Forbes' announcement speech. Of the 64 issues covered in "Fact and Comment", the PC Brief selects seven (7) referencing six (6) separate issues as being issues also promoted in the campaign; yet two of those six (6) issues are not even mentioned in the announcement speech and two others only by a passing reference.

The PC Brief cites to no FECA statutory or regulatory provision, nor to any court opinion to support its "campaign related" standard. It also fails to distinguish the numerous court opinions cited by Respondent which discuss the standard of review for a violation of 2 U.S.C. §441b(a). The PC Brief cites to AO 1988-22 as authority, yet proceeds to set out facts to show only one (and that is dubious) of the "Fact and Comment" columns measures up to the standard in that opinion. The PC Brief ultimately relies on a single advisory opinion to substantiate its standard of review, yet fails to distinguish numerous other advisory opinions cited by Respondents, many of which are on all fours with the issue in this matter.

Contrary to positions which the PC Brief attributes to Buckley vs Valeo 424 U.S. 1(1976), it is precisely the type of vagueness issues which arise in this matter which the *Buckley* court held must meet an express advocacy standard in order to come within the expenditure and contribution limits and disclosure requirements of the FECA. Absent such a standard, the Commission is left with an arbitrary enforcement or mandating pre-clearance of all "Fact and Comment" columns, both of which result in a violation of Respondents' First Amendment protections.

IV. LEGAL ANALYSIS AND ARGUMENT

A. The PC Brief is a clear example that without the "bright line" test advocated by the Courts and Respondent, the Commission is left to an arbitrary selection procedure to determine which columns constitute violations of the FECA, a standard which is contrary to the basic tenets of Respondents' First Amendment protections.

There seems to be no better model than the case presently before the Commission to demonstrate that the muddled "campaign related" standard employed by the PC Brief forces the Commission to make arbitrary decisions pertaining to the content and the intent of issue advocacy publications which they deem a violation of 2 U.S.C. § 441b(a).

At issue are 13 "Fact and Comment" columns written by Mr. Forbes between September 25, 1995 and March 11, 1996.[4] In those 13 "Fact and Comment" columns, Mr. Forbes commented upon 64 separate matters. Of those 64 separate matters, the PC Brief has selected only seven (7)[5] which they adjudged were, "...themes that he promoted in a campaign context (and) were given similar treatment in his columns." (PC Brief p.6) It further states, "Based on a review of all 'campaign-related'

[4]These are the "Fact and Comment" columns which overlay the period of time between Mr. Forbes September 22,1995 announcement of his candidacy for the Presidential nomination and his March 14, 1996 announcement of his withdrawal from that campaign (PC Brief p.6).

[5]Several of these seven are at issue due to their appearance in Forbes magazine and also in the Hills-Bedminster Press. (See footnote. 8, p 10 *infra*)

passages in 'Fact and Comment' columns appearing in Forbes, Inc. publications during Mr. Forbes' candidacy, it appears that Forbes, Inc. made, and the Committee accepted, not less than $94,900 in prohibited in-kind contributions." (PC Brief p.16)

The fact that the PC Brief quantified the values of those seven (7) comments it deemed a violation of §441b(a) correspondingly results in the conclusion that the remaining 57 matters commented on by Mr. Forbes in those 13 columns did not promote campaign "themes" and thus were not in violation of §441b(a). Apparently mere "coordination" of these 57 issues was not enough to deem them to cause a §441b(a) violation. By the standards proffered by the PC Brief, those issues obviously did not constitute "themes" of the Forbes campaign, therefore reference to them in "Fact and Comment" was not considered a violation. That however, mandates the "themes" of the Forbes campaign must have been selected so as to measure them against the issues in "Fact and Comment". Therefore, the PC Brief must first *factually* establish the Forbes campaign "themes", before moving forward, yet it fails to present evidence of any such themes, and that on its own is fatal to the PC Brief argument. (See pp. 13-15 *infra*)

An even more important conclusion from that fact is the PC Brief does not argue Mr. Forbes was *per se* prohibited from writing "Fact and Comment"; rather only prohibited from writing in the column about *certain issue*, which the Commission deems campaign "themes". That standard is so vague that it is constitutionally unenforceable, (see pp. 13-14; 22-27 *infra*, RTB Brief pp.10-11) and causes a "chilling effect" on Respondents' First Amendment rights. (RTB Brief pp. 6-7; and pp.16-17 *infra*)

The PC Brief employs a "campaign-related" standard of review[6] (PC Brief p. 6). Yet, the PC Brief offers no analysis or rational as to why certain issues, to the exclusion of other issues, discussed in the campaign were chosen as campaign "themes" and therefore to be "campaign related" when they were commented upon in "Fact and Comment". It is difficult to imagine a more clear cut case of an arbitrary standard and subjective enforcement of that standard, and for several reasons. First, the PC Brief cites to no statutory or regulatory authority which even references let alone, sets out the criteria the Commission will evaluate to determine what issues measure up to "themes." (See also p. 3 fn 3 and pp 13-14 *infra*) Second, the PC Brief then requires that the Commission make an initial decision of what themes he (Mr. Forbes) promoted in a campaign. (PC Brief p. 6) This is a *factual* determination, and yet little, if any, evidence is cited to justify the PC Brief's claim that these issues were "themes". As noted in the factual summary above, the only evidence which the PC Brief considered to determine the "themes" was the September 22, 1995 announcement speech (PC Brief p.6). The PC Brief fails to proffer any other facts or documentation to evidence how often these "themes" were referenced in the campaign or other similar criteria so as to distinguish them from a one time passing statement about an issue by Mr. Forbes[7].

This failure to establish the legal criteria that was used to determine what constitutes a "theme" and a complete lack of a factual pattern upon which to justify the PC Brief's claim that any of the six (6) subject matters selected measured up to "themes" of the Forbes campaign, to the exclusion of any

---

[6] As argued in the RTB Brief pp. 10-16 and herein at pp. 17-18, Respondents contend that "campaign related" is not the required standard of review to determine a § 441b(a) violation.

[7] Also, see footnote 3 p. 3 *infra* regarding "themes" contrasted to "campaign issues".

other issue, precludes the PC Brief from alleging any one of the issues constituted a "theme".

The PC Brief cites six (6) separate issues as being the "themes" of the Forbes campaign which the PC Brief contends, when referenced in "Fact and Comment," causes them to meet the "campaign related" standard. Those issues are (1) Flat Tax; (2) Gold Standard; (3) Abortion; (4) Bosnia; (5) Federal Terms Limits; (6) Capital Gains (PC Brief at pp.6-7). Yet two of the "themes" which the PC Brief selects are not even referenced in the Forbes presidential announcement speech. (See Ann. Sp.) There is no mention whatsoever of abortion or Bosnia in the speech. There is no factual basis, not even an explanation, in the PC Brief upon which to claim that either of these issues were "themes" of the campaign.

Could there be a clearer indication that the selection process of the FPC "themes" was arbitrary? How were they ascertained to be "themes" and based upon what evidence? Making such claims in the PC Brief with no foundation is not only clear evidence of the arbitrariness of this "campaign related" standard which the the Commission is being requested to ratify, but it raises a question to Respondents and it should to the entire Commission, as to the facts, or the lack thereof, upon which this case is moving forward. Correspondingly, since those two issues were not referenced in the announcement speech, one must conclude the PC Brief also fails to offer any basis for its selection of those "Fact and Comment" columns pertaining to abortion and Bosnia. These columns should be excluded along with the other 57 "Fact and Comments" the PC Brief deems not to be §441b(a) violation (see p.6, *infra*).

As for the "gold standard" being a major "theme," the passage in the speech in which the "gold standard" is referenced is made solely in the context of stabilizing the value of the dollar.

> "We can bring back four and one half percent mortgages, lower interest rates, and give the economy a boost. As we did throughout our nations.history until the late 60's, we must tie the value of the dollar to a fixed measure, such as gold, so that a dollar today will be worth a dollar tomorrow." (Ann. SP p.5)

Respondents submit, this is advocacy not for the gold standard, but rather a fixed measure, whatever it be, to stabilize the dollar value. How can this single reference raise the gold standard to the level of a "theme?" Similarly, the reference to term limits is one phrase in the Announcement Speech: "They talk about term limits--but I mean it, and I will do it." (Ann. SP p.7)

Such minimal references to these two issues factually causes them to fall far short, especially with no collateral evidence, of establishing them as "themes" of Mr. Forbes' campaign. Lacking any factual foundation to support the PC Brief's claim, these two issues cannot be considered "themes" of the Forbes campaign.

The Respondents' RTB Brief addressed the "flat tax" issues appearing in "Fact and Comment". (See RTB Brief pp 29-30) Copies of those two "flat tax" references are attached hereto at Exhibit "B". Both are passing references contained in other headline comments. (October 16th entitled "Big Lessons" regarding the splitting of AT&T and October 23rd entitled "Stop this Strong Arming" regarding private sector tax collectors) Neither reference measures up to promoting a campaign

theme; once again underscoring the arbitrary selection of issues which must be undertaken by the Commission absent the "bright line" standard.

B. None of the columns in the Hills-Bedminster Press even meets the AO 1988-22 legal standards cited in the PC Brief, and each column factually fails to measure up to constitute a "theme" of the campaign.

Of the seven (7) "Fact and Comment" columns which the PC Brief alleges to be the basis for the §441b(a) violation, four (4) of those columns were reprinted in the Hills-Bedminster Press[8] As noted in subsection "IV-A" above, the "Fact and Comment" columns pertaining to abortion and Bosnia, which also appeared in the Bedminster Press, clearly should not be included among the alleged violations due to the fact that the PC Brief fails to state one factual basis to demonstrate that these were "themes" of the Forbes campaign.

That leaves at issue two Bedminster Press "Fact and Comments" columns; the first pertaining to the gold standard and the second pertaining to capital gains taxes. First, Respondents reiterate that the failure of the PC Brief to cite to any other evidence, but for passing reference in the announcement speech, factually precludes those two issues from being considered "themes" of the campaign and, as such, the comment upon those subjects in the "Fact and Comment" column must be classified, along with other 57 comments, not to be a § 441b(a) violation.

[8]The articles at issue were the gold standard appearing November 15, 1995; abortion appearing December 20, 1995; Bosnia appearing November 1, 1995; and capital gains appearing September 27, 1995 (PC Brief p.7).

Second, the PC Brief's discussion of the Bedminster "Fact and Comment" columns as a § 441b(a) violation (PC Brief at p.9) is prefaced with a citation to Advisory Opinion 1988-22 as the legal authority for considering them to be in "coordination" with campaign related themes and thus a violation of the FECA. The PC Brief quotes AO 1988-22 stating that, "...cost associated with publishing materials pertaining to *clearly identified candidates* may constitute in-kind contributions when there is evidence of coordination with the campaign, regardless of whether the material contains expressed advocacy". [9] (PC Brief p.9) (emphasis added)

In an attempt to fulfill this "clearly identified candidate" criteria of AO 1988-22, the PC Brief undertakes what at best can be referred to as a "bungee jump" like rationale. The PC Brief acknowledges that the "Fact and Comment" columns in the magazine and in the Bedminster Press do not: (1) refer to Mr. Forbes' candidacy, (2) identify him as a candidate, (3) advocate any candidate's election or defeat; nor (4) solicit contributions.[10] The PC Brief then asks the Commission to consider the September 27, 1995 Bedminster Press headline (which it admits is a "bonafide news account"[11]) to be a sufficient nexus to fulfill the "clearly identified candidate"

---

[9]The PC Brief apparently acknowledges that the "Fact and Comment" columns appearing in Forbes *magazine do not measure up to the criteria* of AO 1988-22 because there is no "clearly identified" candidate. "Although Mr. Forbes's name and picture appear prominently at the top of each "Fact and Comment" column in Forbes, no explicit references to his candidacy are found in the magazine.(PC Brief p.10 footnote 8) This is also the case in the PC Brief after its brief discussion of AO 1988-22 when it states, "Although the fact of his candidacy is not discernable solely from the columns that appear in Forbes at least one issue of the Hills-Bedminster Press carrying an excerpt of "Fact and Comment" makes clear reference to Mr. Forbes campaign..."(PC Brief p.9) Thus, we have yet another element, the "clearly identified candidate" requirement, of this crude "campaign related" equation which fails, even by the standards of the PC Brief, to stand up to FECA scrutiny.

[10]PC Brief p.9; RTB Brief p.5 citing to OGC RTB Brief at p.8

[11]PC Brief p.9 *footnote 6*

standard of AO 1988-22, so as to cause the "Fact and Comment" column set out several pages later to be deemed "campaign related." The language of the PC Brief in and of itself, demonstrates the absurdity of this argument.

> "While the column itself does not refer to Mr. Forbes candidacy, a *quick glance* at the Hills-Bedminster Press's front page headline and photograph will make it clear to the reader that the author of the column (which also contains a small picture of Mr. Forbes) is also a presidential candidate". (PC Brief p.9; footnote omitted) (Emphasis added)

It is very difficult to comprehend how the PC Brief can make a presumption of a fact, (i.e., the reader "glances" at the front page and then the column) and thereby conclude that this "quick glance" is sufficient to fulfill the AO 1988-22 standard so as to cause that "Fact and Comment" column to be a violation when, but for the "quick glance," it would not be considered "campaign related" thus a permissible column[12].

The second point pertaining to the Hills-Bedminster columns is the PC Brief's argument that based on AO 1988-22, the September 27, 1997 column is only a § 441b(a) violation if read in conjunction with a photo and front page reference to Mr. Forbes' candidacy. In light of that analysis, one must conclude the Bedminster Press November 15, 1995 edition of "Fact and Comment" column regarding the gold standard must fail to be a violation of the FECA because there is no similar picture of Mr. Forbes on the front page or similar headline in that edition of the Bedminster Press

[12]That is the only conclusion which can be reached because based on the PC Brief's AO 1988-22 criteria, absent a "clearly identified candidate", the column fails to violate the standard of AO 1988-22. If that were not the case, why even raise the discussion of applying AO 1988-22 and its standard of review?

pertaining to his presidential campaign. A "quick glance" to the front page of the November 15th edition reveals no nexus to the Presidential campaign which was the essential criteria for the PC Brief's position that the September 27, 1995 column was a §441b (a) violation. Thus, none of the columns in the Bedminster Press constitute a violation, even by the standard of the PC Brief.

This same argument must also apply to the "Fact and Comment" columns in Forbes magazine. Since there was, no headline, reference or even a mention of Mr. Forbes campaign in any of the magazine editions, the PC Brief fails to provide the necessary nexus for alleging the comments were "campaign related." Thus, by the AO 1988-22 standard, employed for review of the September 27, 1995 Bedminster edition, none of the seven (7) magazine columns at issue can be deemed a §441b(a) violation.

One must question what standard of review the PC Brief is advocating, since it cites to such conflicting criteria. The vagueness of this "standard" shows its face once again and underscores the need to adhere to the "bright line" express advocacy standard discussed below.

C. Since the PC Brief cites to no statute or regulation which list the criteria the Commission will consider to determine the FPC "themes", Forbes, Inc. would be forced to seek pre-clearance by the FEC for each portion of the "Fact Comment" column if they are to be free of a fear of possible prosecution.

Applying the "campaign related" standard to determine if any of the issues presented in the "Fact and Comment" columns were also "themes" in the campaign, results in a process with which compliance is virtually impossible, absent pre-clearance of each column by the FEC.

First, the PC Brief cites to no statute or regulation which references or defines the term "campaign theme." Correspondingly, it also fails to cite or list any criteria used to determine what constitutes a "theme." Attempts to rectify this problem by reliance upon AO 1990-5 must fail due to the "case by case" review called for in that opinion (See pp. 15 fn 16 and 19 *infra*). Respondents are therefore faced with a non-defined legal standard against which the facts are to be assessed to determined if they are in violation of §441b (a). The vagueness and arbitrary application of that standard is apparent on its face.

Second, using the procedure argued by the PC Brief, the Commission would be required to make an on-going factual determination as to what were the "themes" of the Forbes campaign[13] and as a third step compare those "themes" with the issues raised in the "Fact and Comment" column. The PC Brief alludes to no sources to be used to identify these themes, nor to the quantity of references required to trigger the "theme" classification threshold. Next comes the impossible chore of ruling

[13]The Commission should also recognize that campaign "themes" could not be considered stagnant but ever evolving in a campaign. What if an issue appearing in "Fact and Comment" (e.g., Privacy of medical records Forbes October 9, 1995) suddenly surfaces as a "theme" weeks or months later? Would the Commission propose retroactive application of the "campaign related" standard? Secondly, the Commission would also be forced to the untenable position of periodically reviewing and assessing which issues have risen to "themes" and which only fall into the category similar to the 57 issues which the PC Brief adjudges not to be "themes."

which issues fall into the permissible and the impermissible categories. (RTB Brief at pp.29-31)[14]

The absence of any regulations listing the criteria which the Commission would employ to determine a campaign "theme" gives Forbes, Inc. no semblance of a notice as to what issues could be considered campaign related if they also appeared in "Fact and Comment." The result of this position taken by the PC Brief would require Forbes magazine to submit each column to the FEC prior to publication and receive an advisory opinion (2 U.S.C. §437f) for each of the proposed columns to determine whether any one of the various subjects referenced in the columns would, in the Commission's opinion, constitute a violation of the Act. This advisory opinion review would be necessitated by the simple fact that there is not even a reference to the terms "campaign related"[15] or "campaign themes" in the statute or FEC regulation. Therefore, the very criteria of what campaign issues constitute a "theme" and the criteria employed by the Commission to reach that determination must be resolved on a case by case basis.[16] That failure to define "campaign related" or "themes" would require Forbes magazine to submit to the Commission every two (2) weeks, proposed copy for "Fact and Comment". It is also questionable, as to whether the Commission could

[14]I would further invite the Commission to review the articles in "Fact and Comment" between September 22, 1995 and March 14, 1996 and compare and contrast the articles selected by the general counsel. The different opinions of each Commissioner as to which comments might be included or not included, evidence that the standard being proffered in the PC Brief is so inexact that it results in an arbitrary pick and chose resolution. If ever there was a situation where the "bright line test" (RTB Brief at pp.9-11) is required, it is in this situation. At issue not only are the First Amendment rights of FPC but also the issue advocacy rights of a long standing and well respected magazine, Forbes, Inc.

[15]See RTB Brief p 11, and fn 10 at p 17

[16]This is even stated in AO 1990-5: "The Commission concludes that each edition of the newsletter should be viewed separately and in its entirety in determining whether a newsletter would be considered an expenditure for your campaign. Any campaign-related content within a particular edition would render expenses of publishing that edition a campaign expenditure". (AO 1990-5) (Footnote omitted).

Commission could render an opinion timely to enable publication in the intended magazine edition, especially given the sixty day period for such opinions to be rendered.

Such pre-clearance of speech every two weeks, especially involving issue advocacy speech, is suspect on its face and courts have traditionally prohibited such a pre-clearance requirement in order for an entity to avoid civil or criminal prosecution. See, e.g., New York Times Co. v. United States, 403 U.S. 713, (1971) (action by United States to enjoin publication of classified material); Organization for a Better Austin v. Jeefe, 402 U.S. 415, (1971) (injunction against distribution of literature); Near v. Minnesota, 283 U.S. 697, (1931) (judicial order perpetually enjoining publication that was critical of government); Information Providers' Coalition v. FCC, 928 F. 2d 866, 877 (9th Cir. 1991). The basic tenets of constitutional due process require that a statue provide adequate notice to a person of ordinary intelligence that actions which he is contemplating are illegal. *Buckley* at page 72, citing to *United States v. Harries*, 347 U.S. at page 617. When First Amendment rights are involved, such statutes require even a "greater degree of specificity". *Buckley*. ibid, citing to *Smith v. Goguen* 414 U.S. 566, at 573 (1974).

The presumption of unconstitutionality of a prior restraint of speech, especially when done administratively rather than judicially, is difficult to rebuff.

> "What Rhode Island has done, in fact, has been to subject the distribution of publications to a system of prior administrative restrains, since the Commission is not a judicial body and its decisions to list particular publications as objectionable do not follow judicial determinations that such publications may lawfully be banned. Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional

validity." Bantam Books, Inc. et. al. v. Sullivan et. al., 372 U.S. 58, 70 (1963).

The administrative versus judicial question is raised as an even greater cause for concern.

> "Here, the MRLC (Maine Right To Life Committee) is seeking a ruling on its expressive activities generally, speech that may occur at any time in the form of interviews with reporters, letters to the editor, guest columns, etc. More important, the MRLC maintains that the FEC regulation is unconstitutional on its face. This is an attack that the FEC cannot dispose of in the advisory opinion process. (The FEC will rule only on whether a particular utterance complies with the statute or its regulations, 2 U.S.C. 437f(a)(1), whereas the whole point of the plaintiffs' attack is that the very existence of the rule chills speech.) Maine Right To Life Committee, Inc. v. FEC, 914 F. Supp. 8, 10 (D.Me 1996).

Absent such pre-clearance time and again for each "Fact and Comment" column, the constitutionality of which is highly suspect, Forbes magazine would very realistically be under the on-going threat of generating a "campaign related" column, in violation of §441b(a). Absent regulations defining "campaign related" and the criteria the Commission would use to determine a campaign "theme" causes not an abstract, but a very real threat to the speech rights of Respondents, one of which clearly creates a "chilling effect" on their First Amendment protections, and especially those of Forbes magazine.

D. The PC Brief next relies on Advisory Opinion 1990-5 as its authority for determining the appropriate standard of review in this matter and yet fails to cite to one court opinion to substantiate its proposed standard of review.

It must strike the Commission as odd, as it does Respondents, that the PC Brief fails to cite to one court opinion to justify the "campaign related" standard of review when alleging this violation of 2 U.S.C. §441b(a) (see also RTB Brief p.11). Respondents' RTB Brief set forth a detailed analysis of various court opinions pertaining to alleged violations of 2 U.S.C. § 441b(a). The PC Brief does not analyze or dispute (it does not even discuss) the standard of review which was employed by the various courts in those cases cited. (RTB Brief pp.10-16) *In each of the following cases, the respective courts specifically noted that at issue was an alleged violation of 2 U.S.C. § 441b(a); the same violation alleged in this matter.* See *FEC v. The Massachusetts Citizens for* Life 479 U.S. 238 (1986) at page 241; *FEC v. National Organization for Women* 713 F. Supp. 428 (D.D.C. 1986) at page 430; *Faucher v. Federal Election Commission* 928 F.2d 468 (1st Cir., 1991) at page 469; *FEC v. Christian Action Network* 894 F. Supp. 946 (W.D., VA., 1995) at page 947; *Maine Right to Life Committee, Inc. v. FEC* 914 F.Supp.8 (D.Me 1996) at page 8; *Clifton v. FEC* 927 F. Supp. 493 (D. Me 1996) at page 495.

Those cases stand for the simple and clear proposition that an alleged violation of § 441b(a) will be reviewed based on the standard as articulated in those cases; specifically, was there a clear unambiguous advocacy for the election or defeat of a clearly identified candidate, commonly referred to as "expressed advocacy." The matter at issue alleges a § 441b(a) violation (PC Brief pp and 16-17) and it is clear the courts have determined the appropriate standard of review for that type of violation; it is no more complicated than that. The Commission should not be lead to believe, as argued by the PC Brief that those cases involved independent expenditures, thereby invoking a different standard of review. The Courts made no such finding, They merely were judging whether

the text of messages constituted an "expenditure" under the FECA. Since each of those opinions, using an express advocacy standard, found no "expenditure" had occurred then the question of whether it was an "independent expenditure" or an in-kind contribution, invoking the §441a limits, was a moot question. (See also pp. 22-27, *infra*)

Even more compelling is the failure of the PC Brief to cite to *any* authorities from any court, let alone the Act or the FEC regulations, to substantiate or articulate the elements of this "campaign related" standard which they are asking the Commission to invoke in this case. This point was raised rather clearly in Respondents RTB Brief and yet it was not rebutted or even addressed in the PC Brief. (See RTB Brief p.11-16) If nothing less, the Commission should have a great level of concern given the extensive amount of litigation undertaken by the Commission on matters involving issue advocacy, and the PC Brief's corresponding failure to cite to one opinion to substantiate its proposed standard of review. Rather the PC Brief asks the Commission to rely exclusively upon a 1990 advisory opinion[17]. That posture just does not measure up to a defensible position.

AO 1990-5, which pre-dates many of the recent court opinions pertaining to issue advocacy[18], was thoroughly reviewed in Respondents RTB Brief at pp.22-24. It was demonstrated that the three prong test of AO 1990-5, even if viewed as controlling authority, (a point disputed by Respondents) was not met based on the facts in this MUR. The PC Brief in its reference to AO 1990-5 states:

---

[17]Due to the failure to meet the "clearly identified candidate" component of AO 1988-22, the PC Brief apparently deems that opinion as insufficient and surfaces AO 1990-5 as its authority to rescue its arguments.

[18]See RTB Brief pp 13-15

> "While Mr. Forbes' commentaries may have served non-campaign purposes in previous years, *publication of his campaign themes* after becoming a presidential candidate *had the effect of advancing his candidacy*, as the Commission suggested would be the case with the continued publication of the newsletter in AO 1990-5." (footnote omitted) (PC Brief p. 11 emphasis added).

This factually indefensible claim in the PC Brief that "Fact and Comment" contained the "publication of his campaign themes" has been thoroughly discredited above. (See pp. 5-9 and fn 3 at p. 3 *infra*)

In a similar factually unsubstantiated and conclusionary statement, the PC Brief claims those same unsubstantiated themes, "...had the *effect* of advancing his candidacy..." (emphasis added) That statement constitutes sheer speculation and fails to demonstrate how or to what magnitude if any, these campaign benign comments impacted, for better or worse, Mr. Forbes' campaign. If the comments had *any* impact in the campaign, the fact of the matter is that no person, not even Mr. Forbes, has any way to know or to quantify that "effect" other than by speculation and second guessing; and that is *not* an acceptable level of evidence to allege a person has violated the Act.

E. The PC Brief misreads the express advocacy standard in Buckley and applies the Courts' holdings out of the context.

In an attempt to dismiss the specific applicability of both *Buckley v. Valeo* supra and *Massachusetts Citizens for Life*, supra, and as a result, numerous other issue advocacy cases, the PC Brief

states."However, neither the Supreme Court nor any other Court has ever applied the expressed advocacy requirement to contributions." (PC Brief p. 12) Further, citing to *Buckley* at page 46, the PC Brief states that, "controlled or coordinated expenditures are treated as contributions rather than expenditures under the Act." (ibid) Both of these principles from *Buckley* are taken out of context to support the misconstrued standard in the PC Brief. It is essential that these comments from *Buckley*, cited as authority for the standard of review advocated in the PC Brief, be considered from the perspective of the issues which were being addressed by the *Buckley* court to understand the Counsel's misuse of those comments.

1. Given the Buckley courts' understanding of contribution they would not have had to confront the application of express advocacy since they considered contributions were made directly to a candidate, thus there would be no question of the contributor's intent.

The *Buckley* court discussed §608 (b)(4)-(6) pertaining to the issue of the one thousand dollar ($1,000) contribution limit to a candidate. In that context, the court acknowledged the definition of contribution was rather broad when it noted it is considered to be anything of value given "for the purpose influencing" an election. In attempting to determine the parameters of "for purpose of influencing an election", the court said,

> "The use of the phrase presents fewer problems in connection with the definition of a contribution because of the limiting connotation created by the general understanding of what constitutes a political contribution. Funds provided to a candidate or political party or campaign committee either directly or indirectly through an intermediary constitute a contribution. In addition, dollars given to another person or organization that are earmarked for political purposes are contributions under the Act." (*Buckley* footnote 24 at p.24)

Therefore, the concept of "expressed advocacy" would never surface in the connotation in which the *Buckley* court used the term "contribution." In their view, and as was originally intended, a contribution is limited to funds, or goods which are *given directly to the campaign.* The analysis or the application of express advocacy does not arise if one contributes money, a desk, paper, etc. directly to the campaign. Express advocacy only becomes material when a third party makes a disbursement and a question arises as to whether the text of the message for which that disbursement was made was for "purposes of influencing an election." At that point of the opinion, the court was not including in their analysis the concept of "expenditures" which, when coordinated with a candidate, caused them to be "in-kind" contributions; that issue was addressed at a later point in the opinion[19]. Therefore the concept of "expressed advocacy" was not relevant to the Court's initial discussion of the definition of a pure "contribution" for §608(b)(4) purposes.

> *2. The Buckley court's classification of expenditures, coordinated with a candidate, as a "contribution" was for purposes of determining what type of expenditures would be subject to the contribution limits, not to create a lesser standard of review to determine if the content of a message was to be regulated by the Act.*

The *Buckley* Court did note, "Expenditures by persons and associations that are 'authorized or requested' by the candidate or his agents are treated as contributions under the Act. See note 53, Infra." (*Buckley* footnote 25 p.24) That quote, however, was a factual statement of what was in the Act, not an analytical conclusion to support the proposition, as is argued by the PC Brief, that the

---

[19]The Court did cite in footnote 25 to the fact that an expenditure, made at the request of or in coordination with the candidate, is treated as a contribution. However, this was not an analytical conclusion, but rather a direct reference to the Act and in fact cross referenced to footnote 53, the discussion regarding expenditure limits, and the "express advocacy" standard.

standard of review for a message which constitutes an in-kind contribution is subject to a lesser standard of review (ie., "campaign related") then would an expenditure (ie. "express advocacy").

It is instructive to review *Buckley* footnote 53 cross referenced in footnote 25. That discussion was in regard to §608 (e)(1) which placed an aggregate expenditure limit on independent expenditures, which was held by the court to be unconstitutional. (*Buckley* at p.44) The proponents of the argument to uphold the independent expenditure limits contended that the appearances of corruption wrought by large independent expenditures would be comparable to the apparent corruption which would be caused by large contributions. Proponents argued that expenditures controlled by or coordinated with the candidate and his campaign might have virtually the same value to the candidate as a contribution and would pose similar dangers of abuse. The Court noted that issue was resolved because "expenditures" that are controlled or coordinated by the candidate, are treated as contributions (subject to limits) rather than expenditures (not subject to limits) under the Act. Thus, contrary to the PC Brief, its *Buckley* quote pertained to what *type* of expenditures (independent or coordinated) would be subject to contribution limits. It did not conclude that the determination of what constitutes an in-kind/coordinated contribution, is subject to a lesser standard of review then would be employed for the determination of what constitutes an expenditure. The express advocacy standard was implemented to address the Court's concern about vagueness, not contribution limits, and vagueness was recognized by the Court to be a grave concern if it involved expenditures, whether coordinated or independent.

The PC Briefs' strained argument to invoke a different standard for a "contribution" and "expenditure" is rebutted in *Buckley's* discussion of their concern about vagueness presented in their discussion of the disclosure provision of §434. The vagueness issue, which is similarly at the heart of this MUR, was a concern to the Court for *both* contributions and expenditures. For purposes of resolving this concern about vagueness, the court summoned the "express advocacy" standard, so as to determine what messages were deemed to come within the restrictions of the Act.

The PC Brief quotes *Buckley*, p.46 stating, "controlled or coordinated expenditures are treated as contributions rather than expenditures" to support the PC Brief position that express advocacy has never been applied to contributions. As discussed in E-1 above, express advocacy was immaterial to the courts definition of contribution. Secondly, the PC Brief's quote deletes the discussion by the Court following that quote pertaining to the context and reasoning behind their statement. The Court was specifically concerned about the vagueness question presented in §608(e)(1) and the determination, in light of that vagueness, as to what expenditures would be subject to the contribution limits. The court noted,

> "For the distinction between discussion of issues and candidates in advocacy of election or defeat of candidates may often dissolve into practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions...
>
> ...In an analogous context, this Court in Thomas v. Collins observed. 'Whether words intended and designed to fall short of invitation would miss the mark is a question both of intent and of effect. No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some

> as an invitation. In short, the supposedly clear cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning.
>
> ...Such a distinction offers no security for free discussion. In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim. (Citations omitted.)" *Buckley* at p.38.

It was based upon that concern for vagueness and citing to *Collins* that the court in *Buckley* went on to state that §608(e)(1) was limited to communications that included explicit words of advocacy of election or defeat of a candidate. If it met the "explicit words" test, then it was deemed to be an expenditure. Contrary to the claim in the PC Brief, the Court did not limit this reference to "independent expenditures", but rather to any "expenditure." A subsequent qualification would be employed to determine whether or not that expenditure was subject to the contribution limits . Specifically, if the expenditure was coordinated with the candidate, then it constituted an in-kind contribution and was subject to the limits of §608(b)(4) and (6). If it was not coordinated, then it was considered an independent expenditure and not subject to the expenditure limits of §608(e)(1).(*Buckley* at p.40). But the disbursement must first be analyzed to determine if it is considered an expenditure (employing the "express advocacy" standard) prior to even considering the coordination issue. If it does not meet the definition of an expenditure, there is no reason to be concerned if the limits do or do not apply, because it is beyond the scope of the FECA's reach and jurisdiction.

Therefore, the PC Brief's discussion of coordination misses the point entirely. Coordination only becomes an issue subsequent to the determination that the disbursement of funds constitutes an "expenditure".

Thus, the PC Brief falters once again in its analysis when it states that the Court has never utilized an expressed advocacy requirement for contributions. It is that very threshold issue of expressed advocacy which must first be analyzed to determine whether a dispersement constitutes an expenditure prior to implementation of the second prong of the analysis; the determination of whether it is coordinated and subject to contribution limits, or independent and not subject to the limitations.

The PC Brief also misconstrues *Buckley* when it states, "It was only when the court construed the statutory provisions as they applied to *independent* expenditures that it found the expressed advocacy test necessary to avoid vagueness. (Id. at 78-79) (emphasis added)." (PC Brief p. 12) That reference was not restricted to "independent" expenditures as the Commission is led to believe by the PC Brief. That section of *Buckley* pertained to a discussion of §434(e), namely the reporting requirements. In addressing vagueness concerns, the Court held contributions and expenditures raise the same concerns.

> "Section 434(e) applies to [e]very person... who makes contributions or expenditures. 'Contributions' and 'expenditures' are defined in parallel provisions in terms of the use of money or other valuable assets 'for the purpose of... influencing' the nomination or election of candidates for Federal office. It is the ambiguity of this phrase that poses constitutional problems.

The Court then referenced its earlier discussion of §608(b), noting they concluded, *for limitation purposes* contributions, included funds given directly to a candidate and also expenditures placed in cooperation with or consent of the candidate. It went on to note that the definition of "contribution" in §431(e), which pertains to disclosure, parallels the §608(b) definition of contribution. However, in its attempt to define "expenditure" in a narrow term, the Court stated that for §434(e) purposes they encounter the same difficulty as they encountered in §608(e)(1). *In order to avoid the similar overreaching and vagueness problems*, the court concluded,

> "To ensure that the reach of §434(e) is not impermissibly broad, we construe '*expenditure*' for purposes of that section in the same way we construe the terms of §608(e)-to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate. This reading is directed precisely to that spending that is unambiguously related to the campaign of a particular federal candidate." (*Buckley* at p.75). (emphasis added)

Note, that quote only references "expenditure" not independent expenditures" as stated in the PC Brief. Contrary to the arguments of the PC Brief, the *Buckley* Court did not limit expressed advocacy to "independent expenditures" rather, it states expenditures, which are defined as advocating the election or defeat of a clearly identified candidate, are the only dispersements which are required to be reported. As noted earlier and reiterated under the discussion of §434(e) by the *Buckley* Court, the use of an expressed advocacy standard for determining contributions is irrelevant given the court's definition of the term "contribution". A contribution is either funds directly given to the campaign or a dispersement *which is first established as an expenditure* and then qualified as an in-kind contribution based upon its coordination with the campaign.

As a last note pertaining to express advocacy, the First Circuit's opinion in The Maine Right to Life Committee, Inc. v. FEC case, previously referenced by Respondent (RTB Brief p.15), has been upheld by the Supreme Court when they summarily denied the Commissions *writ of certiorari*, (Case No. 96-1818, October 6, 1997) thus, leaving in place the ruling holding the "express advocacy" regulations (11 CFR 100.22; 114.2; 114.3) are unconstitutionally over broad and exceeded the Commissions authority. If a court construed those express advocacy regulations as vague and overly broad, Respondents suspect the PC Briefs "campaign related" standard will fall more easily for the same reasons.

F. The coordination application in §114.3 and §144.4 is limited to the specified activities and does not cause any coordinated speech to constitute a contribution or expenditure.

In its RTB Brief, Respondents were initially compelled to address the application of the §114.3 and §114.4 regulations, because the OGC RTB Brief failed to cite to any statute or regulation for the "coordination" concept it was arguing. Absent the independent expenditure regulations, (11 CFR 109) the "coordination" concept pursued in the OGC RTB Brief is not referenced in the regulations but for the §114.3 and §114.4. Respondents' RTB Brief argued that those regulations were not controlling authorization for the issues and activities alleged to be violations in this MUR. Respondents RTB Brief at pp.16-21, lays down a thorough discussion of the applicability of the

Commissions regulations at §114.3 and §114.4. [20] The PC Brief argues that the specific activities listed in §114.3 and §114.4, "...merely implement *certain statutory and constitutionally mandated exceptions* to the general prohibition against corporate and union expenditures in connection with federal elections, and do not comprise a 'close universe' of election related activity that can be 'tainted' by ...coordination of the candidate". ..."(PC Brief at p.14). (Emphasis added)

Respondents RTB Brief at page 17 quotes §114.2 and the intent can not be any clearer than the plain words of the regulation. "Disbursements by corporations and labor organizations for *the* election related *activities described in 11CFR §114.3 and §114.4 will not cause those activities* to be contributions or expenditures, ...". The italicized emphasis set forth in this brief above and the RTB Brief reflect that a clear reading of the regulations does set forth a "limited universe" of activities intended to come within the "coordination" prohibition of those regulations. The PC Brief fails to expand upon this, or explain why Respondents are wrong in their reading of the limited scope of applying "coordination" to the prohibited activities. Rather, the PC Brief goes into a discussion of a "higher level of coordination"[21] which is completely irrelevant to the discussion. If the activity is coordinated, it is coordinated. Whether it is coordinated by the candidate, the campaign staff, vendors, is irrelevant to the discussion. The PC Brief's "higher level of coordinations" discussion fails to address the specific point raised by Respondents in their RTB Brief; coordination only

[20]However, in light of *Maine Right to Life supra*, and the United States Supreme Courts' denial of the Commission *writ of certiorari* (p 27, infra) the enforceability of these regulations, is questionable.

[21]The precise meaning and relevancy of which escapes Respondents.

applies to the *type of activities* specified in the regulations.[22] The PC Brief summarily states the regulations list only certain statutory exceptions, and leaves us to guess what those other included activities might be when the "coordination" concept is to be applied. Absent a more substantive response by the PC Brief, Respondents are left to the argument proffered in their RTB Brief.

G. The PC Brief completely disregards and fails to rebut any of the advisory opinions cited by Respondents.

Respondents RTB Brief at pp.21-28 sets forth a number of advisory opinions which, contrary to the apparent opinion of the PC Brief, directly pertain to the use of corporate assets, coordinated with candidates, promoting issue advocacy. The PC Brief fails to address any of these advisory opinions stating that they are "more factually remote from this matter than Advisory Opinion 1990-5 (PC Brief p11, fn. 11). [23]

---

[22]Due to the exclusion of 57 "Fact and Comment" issues, which were clearly "coordinated" by the standards of the PC Brief, one must conclude there is some limitation of substance or the type of activity which must be applicable, even by the PC Brief's standards.

[23]Contrary to that argument in the PC Brief, the relevance of those advisory opinions cited in the RTB Brief is not whether the candidate exercised, "ownership or control over the entity." (ibid) In this case, ownership and control of the entity is relevant for only purposes of determining the application of the press exemption at 2 U.S.C. §431(9)(b)(I). It is not required to establish "coordination" to substantiate the PC Briefs "campaign related standard" or the application of 11CFR §114.3 or §114.4. The OGC RTB Brief and PC Brief provides a thorough, albeit immaterial, argument regarding the inapplicability of the "press exemption." Contrary to the PC Brief's contention at p 8, fn 5, basic rules of legal analysis requires that one analyze and conclude the principle portion of statute (ie, is it a "contribution" or "expenditure") before one analyzes the applicability of any exemption to that statute.

The applicability of those opinions is clear. For example, in AO 1992-6 (See RTB Brief pp.22-24) a federal candidate, (Mr. Duke), received corporate funds (Vanderbilt University) to pay for him to speak on the subject of affirmative action, an issue which the PC Brief would have to conclude was a campaign "theme" of Mr. Duke's. Since Mr. Duke was giving the speech and was the candidate it is difficult, under the PC Brief theory, not to find the necessary "coordination" to cause their "campaign-related" standard to be triggered; thus a §441b (a) violation. Yet The PC Brief fails to even *attempt* to undertake any type of analysis to distinguish this opinion or any of the other advisory opinions submitted in the RTB Brief or to distinguish the points of law, specifically the use of corporate funds to promote issue advocacy coordinated by the candidate.

This was also the case in the PC Brief reference to MUR 2268, which merely reiterates, almost verbatim, the presentation of that MUR in the general counsel's RTB finding (PC Brief pp.15-16). The PC Brief fails to distinguish or analyze the points raised in Respondents RTB Brief pertaining to that MUR, specifically that the general counsel, after an extensive analysis, concluded the issue advocacy involving Eperson was not a violation of the Act. Nor is there a response in the PC Brief to the Respondents citation to the applicability of MUR 3855/3937 or MUR 4305 (RTB Brief p.27).

H. Mr. Forbes did not seek election nor did he authorize delegates to use his name as their choice for president on the New Jersey ballot.

Respondents RTB Brief at pp.28-29 set forth an initial argument pertaining to the fact that Mr.

Forbes was not "seeking election" in the state of New Jersey. This is obviously relevant since the "Fact and Comment" columns in the Hills-Bedminster newspapers could not impact on an election for which he was not seeking. The PC Brief rebuts by stating that, "in the states where Mr. Forbes was not on the ballot, including New Jersey, the primary elections were held after March 14, 1996, the date he dropped out of the race. Accordingly Mr. Forbes reasons for 'not seeking election' in those states appear to be related to his withdrawal from the race"(PC Brief at p.9 footnote 7)

The New Jersey statute sets out a system by which the presidential candidate is not listed on the ballot, but rather the names of delegates and alternates and next to their name is the name of the candidate whom the delegate indicates is their choice for President. (N.J.Stat. 19:24-5) (1996). Furthermore, authorization from the candidates is required for the candidate's name to appear next to a delegate's name on the ballot. Therefore, Mr. Forbes' name as a candidate would not be on the ballot, but rather the name of the delegates with Mr. Forbes' name adjacent, only if the delegates were so authorized by Mr. Forbes. However, no petitions were circulated on behalf of Mr. Forbes to place delegates supporting him on the ballot, nor was any authorization by Mr. Forbes granted for delegates to have his name appear next to any delegate's name.

The PC Brief statement that the reason Mr. Forbes did not seek election in those states "*appear*" to be related to his withdraw from the race, is speculative at best and the PC Brief sets forth no factual basis for that conclusion. To the contrary, the decision not to seek election was made prior to his withdrawal from the race by Mr. Forbes and is evidence by the fact that no petitions were submitted for delegates supporting Mr. Forbes notwithstanding the fact that the window during

which such petitions could be filed was December, 1995 through April 11, 1996.

Once again, in addition to the legal arguments previously set forth in Respondent RTB Brief, these are additional facts to underscore that Mr. Forbes was not seeking election in the state of New Jersey.

V. Conclusion

For the reasons set out above, there is no legal or factual basis as a result of the investigation in this matter for a probable cause finding. Therefore, Respondents respectfully request that the Commission make a finding of no probable cause on all matters against Forbes for President Inc., Forbes Inc., and Malcolm S. Forbes Jr, and close this matter.

Respectfully submitted,

Paul E. Sullivan
Counsel for Respondents.

Exhibit “A”

Forbes

FOR PRESIDENT

Steve Forbes Presidential Announcement
"A New Conservative Vision"
National Press Club
September 22, 1995

It's no secret. I am here today to announce that I am running for President of the United States.

This is, to say the least, an unusual candidacy, and I expect there are a few skeptics in the room.

But, I am throwing my hat into the ring today in full confidence that this campaign for President can and will succeed.

For the last two decades I have been working in one of the most entrepreneurial sectors of American life, magazine publishing. And as any entrepreneur will tell you, the really big changes, the quantum leaps, are made by those who take risks and challenge the conventional wisdom, who do something new and unexpected.

This campaign will talk a lot about what entrepreneurship and the new economy mean to all Americans. I'll be taking a lot of risks -- saying what no other candidate is willing to, or dares. I'll be living what I'm preaching.

Usually candidates come to a race like this after years in either state or federal government. In the past, that may have been a good thing for the country. But no longer. Not today.

I am running because I believe this nation needs someone in the White House who can break the old patterns, someone who can unlock the stranglehold that the political class has on American life. An outsider who knows first hand, as I do, the promise of the new economy, who sees how government is dragging down all Americans and is determined to change it.

I am running because I believe the American people share the same desire for an end of politics as usual. I believe that they share the same vision of an unshackled future-- a future that embraces all the wonderful opportunities in the new economy.

I think a lot of people would agree, there is an empty feeling in this campaign so far. One reason is that none of the other candidates is raising high the banner of economic expansion and opportunity -- like John F. Kennedy did with his promise to "get this

1400 Rt. 206 North • Bedminster, New Jersey 07921 • 908/781-5111 • FAX 908/781-6001

country moving again," and like Ronald Reagan did when he cut taxes and regulation and ushered in the longest peacetime expansion in American history.

But there are other reasons for the empty feeling. The fact is, the other candidates, on both sides, are insiders. And we all know that if the insiders had the answers, they would have implemented them by now.

I will tell you frankly that any one of the Republicans running now for president would be a vast improvement on the incumbent. But I believe their vision of what we can do is narrow, cramped and constricted. They have been in Washington, or in politics, or both, all of their adult lives. They haven't been at the center of the entrepreneurial economy. I have, both as a reporter traveling the world and as a businessman, running a company.

That has been my life.

As so I am not an incrementalist...not a cautious suggester of cautious changes... not a compromiser with the bully state.

I reject the grim notion of the Washington Politicians that America must learn to make do with less -- that the American people have spent too much and now the American people must pay, that the wagon is heavy and crowded and now is the time to start throwing people off. And I reject the equally grim notion that the American people must constantly pay in taxes for the mistakes the politicians make in Washington -- such as a deficit, which despite years of bluster and two of the largest tax hikes in history -- continues to grow.

I see a different reality, an America of vast potential -- greater than anything that has ever been seen before.-- waiting to be released. I see an American economy that is the most innovative and productive and technologically advanced in the world -- hamstrung by high taxes and counter-productive regulations.

We are like the greatest marathon runner in the world, but we're trying to compete with two 50-pound cinder blocks chained to our legs. It's time to remove the dead weight of Washington, and let the American economy run free.

It's true that we're already changing.

In the election 1994, the people of America voted resoundingly and decisively against -- against higher taxes, against bigger government, against more intrusive rules and regulations, against assaults on family life, against socialized medicine, against the old way of doing things. And they voted against Bill Clinton, against his ideology and soft ambivalence, against his weak and aimless foreign policy

But in 1996 we can vote for. For a new way of doing things, a new Washington -- for a new America full of energy and dynamism and ready to lead the world.

I believe in my heart that the American family is the soul of this nation, and that if the political class would stop interfering we could build a family-friendly America.

I believe that the time-honored American values of hope, opportunity, family, faith and community are the moral bedrock of our nation -- and every action by Washington should be judged by one and only one criterion -- does it help or hurt those values.

Does it create stronger communities, stronger families? Does it create more opportunity, greater security, greater faith in the future?

The career politicians here in Washington, unaware of the fantastic growth waiting to burst forth in our economy, spend their time dividing up an ever shrinking pie. They take from one group in order to dole out favors to others, undermining our trust in the basic fairness of the American system and causing division, envy and bitterness. In order to get their way, they libel the good American people with accusations of racism, sexism and selfishness. And then they wonder why politics has turned into such a nasty business.

And they do this all in the guise of compassion. It reminds me of that old saying that the ten most frightening words in the English language are: "I'm from the Government and I'm here to help you."

America needs to take a new road, one toward an expansive future that is bigger and better than our past. That's why I'm proposing today, and will be talking about throughout my campaign, a liberation movement to take power away from Washington and put it in the hands of the people. A "Boston Tea Party," if you will, that puts an end to the taxing and spending party in Washington, DC. I mean to free the mighty American economy from political repression.

The first element is dramatic pro-growth *tax cuts*.

I'm not talking "revenue neutral" fiddling with the tax code, the usual game in Washington that pretends to cut some taxes while raising others. And I'm not talking about fiddling around the "margins," cutting taxes that only help the well-to-do.

I am talking about across the board tax cuts that are deep and wide and permanent, that reach down to all Americans and get the suffocating weight of the IRS off their backs.

Start by scrapping the tax code. Don't fiddle with it. Junk it. Throw it out. Bury it. Replace it with a pro-growth, pro-family tax cut that lowers tax rates to 17 percent across the board and expands exemptions for individuals and children so that a family of four would pay no taxes on the first $36,000 of income.

Not one cent to the IRS on the first $36,000. Anything over that would be taxed at a flat, fair 17 percent.

The flat tax would be simple. You could fill it out on a postcard. It would be honest. It would eliminate the principal source of political corruption in Washington. It would be fair. Millions of people would be off the federal income tax rolls.

There would be no tax on Social Security. No tax on pensions. No tax on personal savings. It would zero out capital gains taxes. It would set off a boom by letting people keep more of what they earn and by lowering barriers to risk taking.

I will underline here this distinction between my proposal and those floated by other candidates in this political season:

I am straight forwardly calling for a *tax cut* to expand the economy and make everyone better off.

The old-style Washington politicians hide behind the deficit -- they give us shell games rather than tax cuts because their one principle is never, ever take money from Washington. As we all know, the deficit was the prime rationale for the last two tax hikes -- two of the largest tax hikes in American history -- which put the country on a downward spiral, destroying growth and -- guess what -- *expanding* the deficit.

I am proposing real tax cuts because I believe that growth is the key that will unlock the deficit prison.

Will I cut the budget? You bet. Commerce, Energy, Education, HUD, will be stripped of all but their essential functions. A whole alphabet soup of agencies will be eliminated. But cutting alone won't solve our problems.

The fact is, I don't just want less government -- I want better government. The way it is now, good men and good women come to Washington and get caught in a culture of corruption. They enter a place whose rules and realities almost force them to put their own interests before the country's. And they wind up becoming the very people they come here to fight.

I want to change the culture of Washington by changing the rules of the game. And to change the rules of the game, you have to do two things: You have to take away the politicians' power to manipulate the tax code, to trade tax loopholes for re-election money. And you have to limit their terms.

Do those things, and you change the dynamic completely. Do those things and you'll change Washington forever. Do those things, and the people will get their government back again.

And as President, the 17 percent flat tax will be only the beginning. I will continue to cut taxes *from the bottom up*, expanding family exemptions dollar for dollar for every cut in the budget. That will make it dramatic for all America to see -- that every dollar Congress chooses to spend on a pet project is coming right out of America's families pockets.

So I want not only a flat tax, but a flat tax that is a tax cut. And let me caution my party that we must beware the 'ER' candidates -- those who put the letters 'er' at the end of every word, like "I want a tax that's flatter, fairer, simpler." The 'ER' candidates will end up putting our country in the Emergency Room.

Another pillar of a family-friendly policy is sound money. That is, low mortgage rates.

The house your parents or grandparents bought in the 1950's or '60s was probably bought with a 4 1/2 percent mortgage. But in the mid-1960s, the Washington politicians took control of our money and started manipulating it for their own ends. They sat here in Washington, pushed their levers and buttons, and turned the everyday economic reality from "Ozzie and Harriet" to "Nightmare on Elm Street."

The legacy of their power grab is the historically high interest rates that make families today slaves to their mortgages. High taxes and high mortgage rates have put families on a treadmill, and the treadmill is winning. This is why two family incomes today don't seem to do the job that one did in times past.

The answer: We must take our money out of the hands of the politicians. We can bring back 4 and 1/2 percent mortgages, lower interest rates, and give the economy a boost. As we did throughout our nation's history until the late 60's, we must tie the value of the dollar to a fixed measure, such as gold, so that a dollar today will be worth a dollar tomorrow.

Imagine what it would be like if you woke up tomorrow morning with a 17% flat tax that exempted the first $36,000 of income and a fixed long term mortgage of 4 1/2 percent. Imagine what that would do for family life.

We would see a renaissance the likes of which has never been seen before. Families could step off the tax treadmill; wage earners could relax a little, save more easily; parents would have more time to spend with their children and with each other; they would have more time to devote where it belongs -- to the home and hearth, where all true value lies.

It is only by restoring wholeness to our nation's families that wholeness will be returned to our nation.

It is only by a serious commitment to family values -- not just of rhetoric, but of resources -- that the moral and spiritual decline that so troubles us today will be arrested.

The family is the irreducible foundation of any civil, just and humane society and cannot be replaced -- and the liberal, ideological attempts to do so have disastrously ripped our social fabric.

Everyone talks about values -- this is a campaign after all -- but let me tell you how I see the values issue.

Values mean returning to the inspiration of our forefathers that all of us are created equal.

Values mean respecting parents enough to return control of the schools to them. That means giving parents the means to educate their children in the school of their choice.

Values mean having a government that keeps its promises, like on Social Security and like working on a plan to provide for younger workers who now know they will get nothing.

Values mean giving opportunity to all people by removing the red tape and taxes that suffocate our cities.

Values mean welfare programs that help people rather than destroy them.

Values mean real prison sentences for violent crimes.

Values also mean refinding our moral compass in this world as a leader and light among nations, a bastion of freedom, as strong as we are restrained. We need a President who has a U.S., not a U.N. foreign policy, one who understands that the wise and judicious use of American power is now, and has been, the best hope of the world. This world is still a dangerous place; peace through strength must still be our watchword.

At their most fundamental, I truly believe that values and economics are not separate issues -- they are the same issue. A flat tax will restore honesty to the tax code and give the people back their government. In such an atmosphere -- so different from the one we have now -- traditional American values will flourish. Thrift, hard work, and charity; individual responsibility and working towards shared goals; commitment to family and community; faith in the future. These will describe not just the America we want but the America we actually have.

Let us sew up our nation's tattered social fabric. Let's bind up the wounds caused by three decades of mistaken social policy that has undermined America's families. Let us alleviate the anxieties of parents, and broaden the future for our children; bring harmony

and hope back to our lives, and return to the truths that have guided this country so well for so long.

The election before us is not just any election. We stand at the threshold of a new era of possibility. The next President's term will end on the cusp of a new century.

A new century that demands new thinking, new perspectives, the imagination and creativity of all the American people.

I am an optimist.

But I am well aware of the pitfalls of a national campaign. You don't give up the security and freedom of private life to go into the meatgrinder of presidential politics in the modern age, unless you have a serious purpose.

I have one. I intend to offer the American People something they haven't been offered so far: a vision and a voice, a true vision and an honest voice.

For the other candidates talk about a flat tax -- but I mean it, and I'll do it. They talk about term limits -- but I mean it, and I'll do it. They don't even dream about making our currency sound and stable, and never mind talking about it. But I'll talk about it, and I mean it, and I'll do it. The other candidates talk about changing the culture of Washington. But they are the culture of Washington.

I'm the one who will change Washington. Because I'm the one who means it.

We must re-discover and revitalize the American experiment, the essence of which is giving individuals the opportunity to discover and develop their God-given talents. In America, extraordinary deeds are done when seemingly ordinary people are allowed and encouraged to take responsibility for themselves, for their families and for their communities.

If the American experiment is renewed and re-energized, we will astound ourselves and the world with our opportunities and our achievements. The people of the world will ask themselves and their governments, "If America can do it, why can't we?" By following our example and our principles, they will.

And I'll leave you with a final thought. Fifteen years ago, in 1980, the candidacy of a man named Ronald Reagan was considered right here, at this great Press Club. And his prospects seemed so bad that when you listed candidates and their support, he got an asterisk. That's pretty much where I'm starting. But, like Reagan, that's not where I intend to finish.

I thank you all very much. And now, if you have any questions.

Exhibit "B"

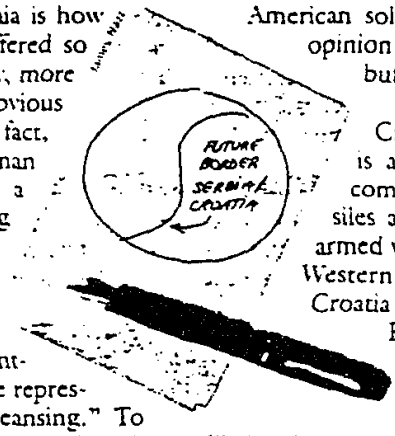
"With all thy getting get und[illegible]anding"

Fact and Comment

By Malcolm S. Forbes Jr., *Editor-in-Chief*

THE GREAT UNANSWERED QUESTION 169

about the upcoming settlement in Bosnia is how that country avoids the fate Poland suffered so many times: being partitioned by greedy, more powerful neighbors. In this case the obvious carver-uppers are Serbia and Croatia. In fact, in May Croatian President Franjo Tudjman indiscreetly told a British politician at a state dinner in London that the divvying up of Bosnia is what he happily foresees, and then he jotted down a map on the back of a menu, showing how his country and Serbia would share the spoils.



This would mean the slaughter of countless numbers of Muslims and the forcible repression of those who survived such a "cleansing." To avoid any such bloodbath, diplomats say, American ground troops must be a part of any settlement. But American soldiers are not the answer here. Public opinion will not support such an open-ended butcher role.

NATO must make clear to Serbia and Croatia that the Bosnian rump state that is about to be created will have the full commitment of NATO war planes and missiles and that Bosnian troops will be amply armed with the most modern of weapons. And Western Europe should repeatedly remind Croatia that its ability to trade with Western Europe and to become a member of the European Union depends entirely upon nonaggressive behavior. The longer a peace can be kept, the more likely that more and more increasingly prosperous Croatians will oppose a war of aggression.

STOP THIS STRONG-ARMING 170

REPUBLICANS ARE TOYING with the idea of having the IRS farm out the collection of delinquent taxes to private-sector bill collectors who would receive sensitive information about taxpayers that normally remains within the confines of the government.

The idea is a bad one. Sure, enforcers outside the federal government might be more "efficient" and cheaper, but any such savings are not worth the price of this gross invasion of privacy.

Unquestionably, compliance with the tax code is declining. Self-compliance was once a characteristic that sharply distinguished us from other nations. But the real villain here is the sheer complexity of the tax code itself. It is axiomatic in history that the more complicated tax law becomes, the less revenue is paid and the more nasty—or corrupt—tax collectors become.

> ***G.O.P. Wants I.R.S. to Use Bill Collectors***
>
> ***Hired Outsiders Could Get Data on Taxpayers***
>
> —New York Times

For almost 20 years Washington and the states have been obsessed with tightening the rules and increasing resources to bring in more money. Result: growing resentment from taxpayers. And no wonder—some 40% of the delinquent notices the IRS sends out are mistakes.

The answer is to junk the current code and enact the flat tax. The resulting simplicity would enormously increase compliance, would remove the major sources of political corruption in Washington, would set off an economic boom because people could keep more of each dollar they earned, and would eliminate barriers to job-creating investment.

SIMPLE WAY TO SAVE $$$ 171

ONE QUICK WAY to reduce the deficit is to index government bonds for inflation. Uncle Sam could then sell long-term debt with coupons as low as 2%. Britain began indexing its government paper in the early 1980s. London now issues bonds with maturities for almost 40 years, with interest rates averaging around 3.5%.

After an indexed bond is sold, interest and principal are geared to reflect inflation. Since investors know that they will earn a "real" return, they don't expect a premium in interest rates as compensation for unknowable levels of future inflation.

Our Treasury Department has resisted the idea since the Brits started it nearly 15 years ago. Too bad. In the early 1980s we were issuing long-term, fixed-rate bonds

with coupons of up to 15.75%. If we had started indexing them, we would have saved literally tens of billions of dollars in interest payments, as inflation plummeted from 13% to 4%.

The Clinton Administration has been shortening the average length of our debt as a gimmicky way to reduce the budget deficit. This is a dangerous trend, the most extreme example being Mexico, which relied almost entirely on short-term maturities and was thus extraordinarily vulnerable to financial shocks.

Indexing would also reduce the temptation of the Federal Reserve to engage in inflationary policies, knowing that the government would immediately face higher costs.

Ultimately, of course, the best lower-interest-rate policy is refixing the dollar to a fixed measure such as gold. In the meantime, indexing is a sensible bridge.

GIVE PEACE A CHANCE

NOW THAT ISRAEL AND THE PLO have signed an historic agreement concerning the West Bank, both sides should be urged to shuck off some deeply ingrained philosophical barriers to economic progress.

Israel today is one of the most overregulated, overtaxed nations. Income tax rates rapidly reach 50%, and there are numerous indirect taxes. It costs an employer more than $3 to give a worker an aftertax salary increase of $1. If Israel were to enact a flat tax—as a small group of Knesset members are proposing—and sweep away some of the more ridiculously onerous rules, the country would quickly reach double-digit growth rates. Its highly educated, hard-working, innovative work force guarantees such a result.

The government in Jerusalem would then be in a position to advise the Palestinians—even more statist-minded than the Israelis ever were—to do the same. Since the Palestinians began achieving more self-rule, government decrees and taxation have become oppressive. The new governing authority not only has stamped out grassroots entrepreneurship but also has introduced a wave of outright thuggery.

The only hope for lasting peace is if this region becomes a hothouse of prosperity.

ECONOMIC MALPRACTICE—AGAIN

ARGENTINA'S FREE-MARKET finance minister, Domingo Cavallo, recently survived an assault from his country's retrograde political forces. But the economic slump that has been fueling the attacks against him underlines yet again how destructive the economic medicine and advice are that we and the International Monetary Fund administer to other nations.

Cavallo: How long can he and his country survive bad medicine?

Starting in 1991—and with the full support of President Carlos Menem—Cavallo began liberating a nation that was suffocating under excessive inflation, taxation and regulation. By strictly tying the value of the peso to the dollar via a currency board (no peso can be issued unless it is backed by hard currency), Cavallo quickly reduced inflation from over 2,000% to under 4%. Tax rates were cut; stifling regulations were eased; and state-owned companies, including telephone and oil, were privatized. Until last December's Mexico crisis, Argentina was enjoying an impressive annual growth rate of almost 8%.

Now, thanks to IMF-imposed austerity, Argentina is writhing in recession. When Mexico abruptly devalued its own peso, speculators attacked Argentina's, figuring it would quickly succumb. Foreign capital was withdrawn from Argentina, sharply reducing the money supply and bringing on a devastating credit crunch. Knowing the huge costs of inflation-causing devaluations, Cavallo fought back, impressively cutting government spending.

But Argentina needed temporary loans to ease the credit shortage. Alas, with our connivance, the IMF provided the necessary funds but demanded higher, anti-growth tax increases in return. If the Clinton Administration knew what it was doing, it would have told the IMF to extend the money and require Buenos Aires *not* to boost such growth-inhibiting exactions.

The peso was saved, but the unnecessary economic slowdown is making it extraordinarily difficult for the government to introduce another round of needed reforms—particularly with regard to onerous labor laws and a hemorrhaging health care system—to stimulate further growth.

Once more, Washington has gratuitously hurt the cause of democratic, free-market capitalism.

RESTAURANTS—GO, [illegible], STOP

Here is the distilled wisdom of brothers Bob, Kip and Tim, and other FORBES *eatery experts Jeff Cunningham and Tom Jones.*

● **Le Périgord**—405 East 52nd St. (Tel.: 755-6244). Menu, decor, captain, waiters and flowers all speak of an earlier, grander era for New York French restaurants. While old-fashioned, Le Périgord retains a freshness and vitality. Delicious food: perfect cold foie gras with Sauterne jelly; a simple and superb artichoke vinaigrette; beef stew; grilled Dover sole; cooked-to-order shad roe.

● **Thomas Scott's on Bedford**—72-74 Bedford St. (Tel.: 627-4011). While the setting is charming and romantic, the food is terrible.

● **Hangawi**—12 East 32nd St. (Tel.: 213-0077). Unusual Korean restaurant. Vegetarian menu with such specials as pumpkin porridge, tofu roll and mushroom bulgogi. Traditional Korean full-course meal, pleasing, light and satisfying.

● **La Ripaille**—605 Hudson St. (Tel.: 255-4406). Like L'Auberge du Midi, this is an atmospheric West Village French bistro. Try the fish and game dishes.

● **Vong**—200 East 54th St. (Tel.: 486-9592). Unique, like eating on the set of *The King and I*. Try appetizers such as crab spring roll with tamarind dipping sauce or sautéed foie gras with ginger and mango. Entrées, just as special: lobster with Thai herbs; roasted chicken with lemongrass; black bass with black trumpet mushrooms, chestnut and lotus root broth. Desserts, worth every calorie.

"With all thy getting get unde[illegible]going"

Fact and Comment

By Malcolm S. Forbes Jr., *Editor-in-Chief*

STOP STUNTING OUR PROSPERITY

THE DIRECTORS OF THE National Association of Manufacturers have issued a resolution calling on the Federal Reserve to ease monetary policy to stimulate growth. Others should take up this cry. There's no reason we can't expand at a 50% to 100% faster pace than the Fed thinks we're capable of doing.

Our central bank, with the overt support of the Clinton Administration and the passive acceptance of congressional Republicans, believes that real growth in excess of 2.5% a year will trigger inflation. That's a preposterous proposition, but it still retains an unassailable grip on the minds of Washington policymakers. Between the end of the Korean War and the big Vietnam buildup of the 1960s, the U.S. economy expanded at an annual average of 3.5%, with negligible inflation. Growth during the Reagan expansion averaged almost 4%, while inflation plummeted.

Given the Reagan record, not to mention so much other overwhelming evidence, why doesn't the GOP take the Fed to task?

LASSOING LAWYERS LIBERATES THE REST OF US

TORT REFORM IS BOGGED DOWN, even in this Republican Congress, as the tri[illegible] bar showers contributions on a party it had disdained until last November's elections. Too bad: Real change would help stimulate prosperity. A study from the National Bureau of Economic Research finds that reforming our so-called civil justice system will enormously benefit job creation and economic expansion. Researchers found that states that reduced excessive litigation and unjustified awards did far better economically than states that did not. In fact, the study found that employment fell when suit-encouraging laws were passed.

Gratifyingly, states are enacting their own progrowth changes. Particularly impressive are reforms enacted by Governor George W. Bush in one of the most notoriously litigation-happy states, Texas.

GO SLOW

REPUBLICANS are ready to wield an ax against the earned income tax credit. They should think carefully before they act. This credit supplements incomes of low-wage earners. Its goals: to get people off welfare, since taking a job means a sharp, quick loss of noncash benefits, and to keep those with low incomes from falling into welfare.

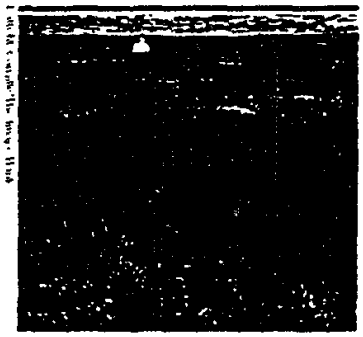
The program has expanded far beyond what it should have, and it is riddled with fraud. The GOP is, of course, right to deal with these problems. But until there is genuine welfare and tax reform (read flat tax), the principle of the earned income tax credit is sound.

A scalpel, not a meat cleaver, is called for.

AN ANTI-AG PROGRAM

ONE MEASURE Washington should kill is the Conservation Reserve Program. Its purpose is to have farmers set aside highly erodible or other environmentally sensitive land. Farmers are paid not to grow crops on the land for ten years.

This supposedly pro-environment program does more harm than good. Around 36.4 million acres have been set aside, an area larger than the state of Iowa. Most acreage is actually good agricultural land that could be used soundly by incorporating basic environmental safeguards.



Opportunity lost: Unused fields mean losing overseas markets.

At a time when world trade for food is growing, this perverse program reduces American agricultural production, thereby leaving global markets open to foreign competitors. Lower production has meant lessened agricultural activity, resulting in social costs. Senator Kent Conrad (D–N.D.) has blamed the Conservation Reserve Program for destroying "small town after small town."

Good land should not lie fallow, especially when market opportunities are expanding worldwide.

POLITICAL HOSTAGE

THE CLINTON ADMINISTRATION is slowing down efforts to bring other nations, such as Chile, into Nafta. The reason is political. In the aftermath of the Mexico debacle, Nafta is seen as an electoral liability. Ironically, if the Administration and Mexico had lived up to the spirit of Nafta, Mexico today would be humming with vibrant rates of growth.

Last December's disastrous devaluation (which we urged on Mexico) was an anti-free-trade move meant to make our exporting to Mexico more difficult and to give Mexican exports an artificial boost by effectively lowering their prices. That is protectionism. Since December, our exports to Mexico have shrunk, costing us tens of thousands of jobs. The Mexican economy is in deep recession.

Previously, U.S.-Mexico trade had blossomed because barriers were lowered and the peso-dollar relationship was stabilized. Between 1985 and 1994, American exports to our southern neighbor just about quadrupled, from $13 billion to $50 billion.

BIG LESSONS

THE STUNNING ANNOUNCEMENT that AT&T is splitting itself into three companies underscores two critical points. The first, and lesser one, is that big is not necessarily better, despite a spate of sensational mergers. The information age puts a premium on speed for creating opportunities and for implementing up-to-date technology. Only such fast companies can achieve the productivity and create the products and services essential for staying successful. AT&T's CEO Bob Allen rightly pointed out that management was spending too much time and too many resources keeping track of and integrating the company's multitudinous businesses and markets.

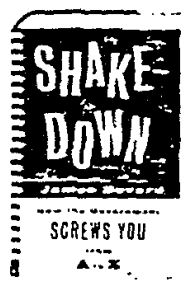
CEO Allen: Keeping core company focused by shedding non-core parts.

The breakup will mean thousands of layoffs, which leads to the second, more important point: In an environment where such downsizing remains a constant, it is essential that the American economy be expanding vigorously instead of moving at the anemic rates of recent years. Otherwise, those jobs will not be replaced with comparable ones—not to mention creating the new ones needed for young entrants into the work force.

The way to get the economy growing as it should is to enact the flat tax. That won't happen until after the next election. In the interim, Congress must cut the capital gains tax to generate job-creating investment.

TRUE TALES OF TERROR

Shakedown—by James Bovard (Viking, $14.95). Bovard's make-your-blood-boil book of government's abusive excesses against ordinary Americans should turn even the most stout-hearted statist into a fervent libertarian. In anecdote after anecdote the author chronicles outrageous acts from agencies such as the Environmental Protection Agency, the Equal Employment Opportunity Commission, the Department of Housing and Urban Development, the Food and Drug Administration, and even municipal zoning boards. This wee volume underscores the reason so many Americans are turning conservative. It's one thing for the government to go after major corporations, quite another when it begins strong-arming countless thousands of ordinary citizens.



Bovard's wide-ranging, meticulous research has probably put him at the top of any bureaucrat's most-wanted list. Excerpts: *In 1990, Sissy McGill, owner of Solid Gold Pet Foods in El Cajon, California, was jailed for 179 days and fined $10,000 after the FDA prosecuted her for claiming that her dog food offered pooches "a long and healthier life." . . . FDA review time for major new medical devices has increased from 337 days in 1988 to almost 800 days in 1994. . . . The Endangered Species Act has made self-defense a crime. John Shuler, a Montana rancher, was fined $4,000 by the Interior Department for shooting a grizzly bear. Shuler saw three grizzlies attacking his sheep—and a fourth one heading toward him. He shot the bear charging him, then retreated to the safety of his home. [When] the Interior Department sued, a judge held that Shuler was at fault because "he purposely placed himself in the zone of imminent danger."*

RESTAURANTS—GO, , STOP

Here is the distilled wisdom of brothers Bob, Kip and Tim, and other FORBES *eatery experts Jeff Cunningham and Tom Jones.*

● **Parioli Romanissimo**—24 East 81st St. (Tel.: 288-2391). Remains one of the best—and most expensive—restaurants in New York.

Martini's—810 Seventh Ave., at 53rd St. (Tel.: 767-1717). Food very inconsistent. Maryland crab cakes not only uninspiring but the smallest we've seen. Chicken breast paillard, over-sauced. French fries, disappointing. So are desserts.

● **Taliesin**—55 Church St. (Tel.: 312-2000). Positive addition to the limited selection of restaurants downtown. Grilled lamb chops and grilled swordfish, first-rate. Flourless, bitter chocolate cake with caramelized bananas, and the lemon mascarpone cheesecake, heavenly. Service wasn't quite up to the standard one would expect in a hotel restaurant.

● **Le Colonial**—149 East 57th St. (Tel.: 752-0808). Bad-tasting, greasy food; inattentive service. Victim of its own success.

● **Sasso**—1315 Second Ave., near 70th St. (Tel.: 472-6688). Welcome is warm; service is efficient and courteous; and the food is very good. Beef gnocchi with arugula and goat cheese sauce—innovative and delicious.