



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4471

DATE FILMED 12/1/98 CAMERA NO. 3

CAMERAMAN EES

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September 18, 1996

SEP 19 5 20 PM '96

Honorable Lee Ann Elliott
Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

MUR 4471

Re: Complaint Against the Montana State Democratic Central Committee
and the "Friends of Max Baucus" Committee

Dear Madam Chairman:

Pursuant to the authority found at 2 U.S.C. §437g(a)(4)(A), I file this formal complaint with the Federal Election Commission (the "Commission"). This complaint alleges a series of violations of the Federal Election Campaign Act of 1971, as amended (the "Act") by the Montana State Democratic Central Committee (the "Respondent State Central Committee") and the "Friends of Max Baucus" Committee with respect to the June 4, 1996 primary election for nomination of a candidate for the November, 1996 general election for United States Senator from Montana. I respectfully request that the Commission move forward to investigate this complaint, as is provided for at 2 U.S.C. §437g(a)(2).

This complaint, on information and belief, alleges violations of, among other sections of the Act, 2 U.S.C. §441a(a)(2) and 2 U.S.C. §434b and involves the unlawful financing of a direct-mail advertising piece, entitled "We Agree", by the Respondent State Central Committee in connection with the reelection effort of United States Senator Max Baucus.

FACTS: On or about May 29, 1996, Respondent State Central Committee caused a direct-mail advertising pamphlet, entitled "We Agree", to be mailed to some 75,000 Montana addresses (see Exhibit 1). The existence of this mailing was first reported by the Great Falls (Montana) Tribune on May 30, 1996 (see Exhibit 2).

The Democrat primary to select a nominee for the November, 1996 general election for the office of United States Senator was held on June 4, 1994. As a result, the mailing of the pamphlet at issue in this complaint was undertaken by Respondent State Central Committee at least one full week before the primary election which resulted in the nomination of Senator Max Baucus to be his party's candidate in the November, 1996 general election.

Under operation of state law, Montana Democrats voting in the June 4, 1996 primary election were allowed to "write-in" the names of and vote for individuals other than candidate Max Baucus. Upon information and belief, several other individuals received votes from Montana Democrats at the June 4, 1996 primary election. In fact, on June 4, 1996 candidate Max Baucus received valid write-in votes in other party primaries, including that of the Montana Reform Party.

Candidate Max Baucus, the winner of the June 4, 1996 Democrat primary, was not officially certified by the Montana Secretary of State as the Democrat nominee until August 22, 1996 (see Exhibit 3).

The direct-mail pamphlet at issue in this complaint contained a disclaimer identifying the "Montana Democratic Party" as the sole sponsor of the mailing, without identifying the Respondent

"Friends of Max Baucus" Committee as either the benefiting political committee or as having authorizing the pamphlet. The U.S.P.S. "bulk mail permit" of the Montana Democratic Party was used to mail this pamphlet. The return address listed on the pamphlet is that of the Respondent State Central Committee (see Exhibit 1).

This direct-mail pamphlet utilized pre-printed mailing labels that unquestionably were produced by a high-speed commercial printer and were not hand addressed by volunteers (see Exhibit 1). Upon information and belief, these pamphlets were pre-sorted, using a nine digit zip code, by the mail house under contract with the Respondent to produce this pamphlet and thus no volunteer effort was used by Respondent State Central Committee to produce this mailing.

On its June 30, 1996 Report of Receipts and Disbursements, Respondent State Central Committee disclosed, as an "operating expenditure" that it paid the "November Group" the sum of \$10,000.00 on May 29, 1996 to produce this mail project (see Exhibit 4). On the same report, the Committee reported, as an "operating expenditure" total payments of \$6016.83, on May 24, 1996, to the United States Postal Service for mail postage (see Exhibit 5). On the same report, the Committee disclosed that it paid the "November Group", as an "operating expenditure", an additional \$10,584, on June 12, 1996, for what appears to be the second payment for this mail project.

During the time period at issue in this complaint, the "November Group" was a vendor to both Respondent committees. The April 30, 1996 Report of Receipts and Disbursements and the "Pre-Primary" Report of Respondent "Friends of Max Baucus" Committee disclose that Respondent "Friends of Max Baucus" Committee has employed the services of the "November Group" to produce its direct mail effort. On the April 30, 1996 Report, the "November Group" is shown as the recipient of \$18,000 disbursement from Respondent "Friends of Max Baucus" Committee for direct-mail fundraising. On the Pre-Primary Report, Respondent "Friends of Max Baucus" Committee discloses disbursements to the "November Group" of \$425.00 for "printing" and \$5000.00 for "professional services."

The pre-primary Report of Receipts and Disbursements filed by the "Friends of Max Baucus" Committee fails to either disclose the receipt of an "in-kind contribution" from the Respondent State Central Committee with respect to the cost of this mailing or a "coordinated expenditure" with the Respondent State Central Committee with respect to the cost of this mailing.

THE LAW: The law with respect to the use of and payment for direct-mail political advertising of this type is well settled. Expenditures or disbursements made by the Respondent State Central Committee in connection with a federal election, such as the June 4, 1996 Senate primary in Montana, are regulated and limited by the Act. The law requires that the Respondent State Central Committee treat pre-primary expenditures made on behalf of the "Friends of Max Baucus" Committee as an "in-kind" contribution or a coordinated party expenditure, and properly disclose such expenditures to the Commission.

While the Act exempts certain expenditures (such as "volunteer component" direct mail advertising), made by a state party committee on behalf of its nominee in the general election, from the definition of a "contribution" (see 2 U.S.C. §431(8)(b)(x)), this exemption is not applicable since the direct-mail pamphlet at issue was mailed by Respondent State Central Committee at least one full week prior to the June 4, 1996 Democrat Senate primary in Montana.

The Act's limitation on cash and "in-kind" contributions made by the Respondent State Central Committee to the Respondent "Friends of Max Baucus" Committee, prior to the primary election on June 4, 1996 is \$5000.00 (see 2 U.S.C. §441a(a)(2)(A)). Any contribution in excess of this limit made prior to June 4, 1996 by Respondent State Central Committee to Respondent "Friends of Max Baucus" Committee is an "excessive contribution" prohibited by the Act. The Act's limitation on "coordinated" contributions made pursuant to 2 U.S.C. 441a(d) by Respondent State Central Committee is \$61,820.00 and any coordinated expenditure made by Respondent State Central Committee must be deducted from and reported to that limit.

LEGAL ANALYSIS: Expenditures to finance the cost of direct-mail advertising made by Respondent State Central Committee in connection with or on behalf of Respondent "Friends of Max Baucus" Committee, prior to the June 4, 1996 primary election in Montana must, by operation of law, be considered primary expenditures (see 11 C.F.R. 100.7(b)(15)). An expenditure, such as the one at issue here, made before the date of a nominating primary cannot have been made "on behalf of any nominee" (since no Democrat "nominee" for election to the U.S. Senate existed on or before June 4, 1996 in Montana). Therefore such an expenditure did not qualify for the so-called "volunteer component exception" referenced above.

By operation of Montana statute, Democrat candidate Max Baucus was not considered, at any time prior to June 4, 1996, the "nominee" of the Respondent State Central Committee. Senator Max Baucus was merely a candidate for nomination on the June 4, 1996 primary ballot. He was not the nominee of his party on or before that date. Under state law, Montana Democrats voting in the June 4, 1996 primary election had the ability, pursuant to section 13-12-208 of the Montana Code Annotated, to write-in the names of candidates other than Senator Baucus for nomination for election as United States Senator from Montana in the November, 1996 general election. Upon information and belief, write-in votes were cast for candidates other than Senator Baucus at the June 4, 1996 primary election and the Montana Secretary of State did not officially certify that Senator Baucus had received his party's nomination until August 22, 1996.

Since candidate Max Baucus was not the "nominee" of his party prior to June 4, 1996, expenditures made by Respondent State Central Committee to develop, produce and mail the pamphlet at issue in this complaint cannot be deemed by Respondents as an "exempt administrative expense" made in connection with the general election. Even if, *arguendo*, candidate Max Baucus was considered, by Respondent State Central Committee, to be its "unofficial" U.S. Senate nominee prior to the June 4, 1996 primary election (a legal impossibility), preparation and mailing of the direct-mail pamphlet at issue in this matter did not meet the tests for the so-called "volunteer component" exemption from the definition of an "expenditure" for two reasons: (a) the pamphlet was obviously prepared and mailed by a professional mail house and no "volunteer" activity was employed to prepare or mail the pamphlet, a requirement set forth at 11 C.F.R. §100.8(b)(16)(i) through (iv) and (b) this pamphlet does not meet the second fundamental criterion for an exempt "volunteer component" mailing since it was prepared and mailed prior to the June 4, 1996 Montana Democrat primary election.

Neither did this direct-mail pamphlet meet the specific tests for exempt "issue advertising" material as outlined by the Commission in Advisory Opinion 1995-25. This pamphlet fails the standards set forth in AO 1995-25 because (a) the text of the pamphlet cites a series of positions on policy issues held by Respondent Baucus and Dennis Rehberg and clearly identifies Respondent Baucus as a "Democratic Candidate for the U.S. Senate" and Dennis Rehberg as a "Republican Candidate for U.S. Senate", references which clearly constitute a prohibited reference to a federal election and a prohibited

"electioneering message" (i.e., a reference which left the reader with the impression that the Respondent State Central Committee sought to compare the records of the two identified candidates for the purpose of influencing the November, 1996 general election and (b) the text of the pamphlet does not include the required "call to action" to the reader to contact a federal official with respect to the reader's position on a specific legislative issue then pending before Congress.

Additionally, this direct-mail pamphlet does not fall within the exemption for "issue advertising" since the text employed in the pamphlet is clearly and unambiguously a comparison between the public record and pronouncements on policy issues of two candidates, Senator Baucus and Mr. Rehberg.

By any analysis, the expenditure of the Respondent State Central Committee to develop, prepare and mail the direct-mail pamphlet at issue in this complaint constituted a primary election contribution to Respondent "Friends of Max Baucus" Committee. As such, any expenditure by Respondent State Central Committee in excess of the \$5000.00 per election contribution limit imposed by 2 U.S.C. §441a(a)(2)(A) is a knowing and willful violation of the Act. As a result, it appears that Respondent State Central Committee expended approximately \$26,600.83 on the development, preparation and mailing of this pamphlet, an excessive contribution in the approximate amount of \$21,600.00.

As a primary election contribution from Respondent State Central Committee to Respondent "Friends of Max Baucus" Committee, the contribution was improperly disclosed to the Commission by the Respondent State Central Committee (see 2 U.S.C. §434(b)(4)(H) and was not disclosed at all by the Respondent "Friends of Max Baucus" Committee (see 2 U.S.C. §434(a)(2)(A)(1)).

STATUTORY VIOLATIONS: The Respondent State Central Committee erroneously thought and reported to the Commission that this commercially prepared and mailed pamphlet was an "exempt administrative expenditure". Such a mischaracterization appears to have been premised on one of two false assertions, either that the pamphlet was as a "volunteer component" mailing undertaken in connection with the general election on behalf of its nominee for that election or that the pamphlet was a "legislative issue" advertisement. Because the law does not allow the utilization of "volunteer component" direct-mail advertising before a primary election and because this pamphlet did not meet the Commission's factual tests established for either "volunteer component" or "legislative issue" direct-mail advertising, Respondent State Central Committee's posting of the costs attributable to this pamphlet as an exempt administrative operating expenditure was a violation of 2 U.S.C. §441a(d)(1).

Because the pamphlet did not meet such tests and thus cannot be considered an exempt administrative operating expenditure, any costs incurred by Respondent State Central Committee in connection with this mailing must be considered a primary election contribution to Respondent "Friends of Max Baucus" Committee and, if in excess of \$5000.00, such a primary election contribution is excessive and is in violation of 2 U.S.C. §441a(a)(2)(A).

Respondent State Central Committee, having used a primary election contribution to pay for the costs associated with this pamphlet, misreported the expenditure to the Commission as an exempt operating expenditure. In fact, this expenditure should have been reported as a primary contribution to Respondent "Friends of Max Baucus" Committee. That it was not so reported is a violation of 2 U.S.C. §434(b)(4)(H).

Respondent "Friends of Max Baucus" Committee having authorized Respondent State Central Committee to prepare and mail this pamphlet on its behalf and having received the benefit of the mailing

of the pamphlet, failed to disclose to the Commission its receipt of a primary contribution from Respondent State Central Committee, a violation of 2 U.S.C. §434(a)(2)(A)(1).

Respondent "Friends of Max Baucus" Committee, having received a primary election contribution in excess of \$5000.00 from Respondent State Central Committee in connection with the preparation and mailing of this pamphlet, violated 2 U.S.C. §441a(a)(2)(A).

CONCLUSION: Given the violations of the Act described above, I urge the Commission to (1) find that the Respondents and their Treasurers violated 2 U.S.C. §441a(d)(1), §441a(a)(2)(A), §434(b)(4)(H), §434(a)(2)(A)(1), and §441a(a)(2)(A) regarding the financing and public disclosure of the so-called "We Agree" direct-mail advertising pamphlet and (2) impose appropriate penalties for such violations.

Respectfully,



Craig M. Engle, Esq.

General Counsel

National Republican Senatorial Committee

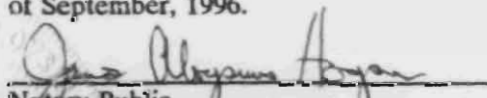
Ronald Reagan Republican Center

425 Second Street, N.E.

Washington, DC 20002

Exhibits Attached

Subscribed and sworn to
before me this 18TH day
of September, 1996.


Notary Public
My Commission expires Nov. 30, 1996

WAS-192766

"We agree."

Dennis Rehberg
Republican Candidate
for U.S. Senate



Max Baucus
Democratic Candidate
for U.S. Senate



Non-Profit Organization
U.S. Postage
PAID
Montana Democratic
Party

Timothy & Lorna Kuney
400 N. Callif
Helena MT 59601-4908

Box 802
Helena, Montana 59624



"Here's where we agree."

We both support a balanced budget
amendment to the Constitution.

We both support comprehensive welfare reform.

We both think that Montana is a great place
to live, work, and raise a family.



Max Baucus believes:

- ☒ Baucus supports an increase in the minimum wage to help working families make ends meet.¹
- ☒ Baucus supports expanding the earned income tax credit to provide tax relief for Montanans making less than \$30,000.²
- ☒ Baucus wrote the 1990 Clean Air Act, a measure that has led to cleaner air and has created hundreds of new jobs in Montana.³
- ☒ Baucus recently introduced legislation to provide a \$5,000 tax deduction to parents putting their children through college or vocational school.⁴
- ☒ Baucus successfully eliminated an estimated \$137 million in lavish overspending on courthouse construction projects, and helped blow the whistle on the intelligence service's \$350 million "secret" office building in Virginia, an act that led to a \$40 million cut in the agency's budget.⁵



Dennis Rehberg believes:

Minimum Wage

- ☐ Rehberg opposes increasing the minimum wage.⁶

Middle-Class Incomes

- ☐ Rehberg would raise taxes on more than 44,000 working Montanans.⁷

Clean Air & Water

- ☐ Rehberg seeks to restrict a community's "right to know" about toxic pollutants in our own neighborhoods.⁸

Education

- ☐ Rehberg supports a proposal to cut aid to schools and scale back student loan programs. As a legislator, Rehberg opposed the creation of a Governor's scholarship to encourage Montana's most talented high school graduates to attend Montana Universities, Community Colleges, and Vo-Techs.⁹

Government Waste

- ☐ Rehberg supports spending billions of tax dollars on development of the "Star Wars" strategic defense initiative.¹⁰

1. Missoulian, 10/30/95 2. Harris Daily News, 4/22/96 3. HR 2264, "The Omnibus Budget Reconciliation Act of 1993" 4. Great Falls Tribune, 10/27/95, Economic analysis provided by a Department of the Treasury Office of Economic Policy Study, 8/8/95 5. S. 145, "1990 Clean Air Act Amendments" 6. Rehberg vote on Montana Senate Bill 452, 1985, Billings Gazette, 7/21/95 7. S. 1312, Great Falls Tribune, 10/2/95 8. Billings Gazette, 7/1/95, Rehberg vote on Montana House Bill 510, 1989 9. Great Falls Tribune, 12/15/94, S. 2802 10. "Rehberg PAC Kit," page 4

"Here's where we disagree"

WRITE THE TRIBUNE

At P.O. Box 5468, Great Falls, MT 59403

or e-mail us at gftribune@mcn.net



Baucus takes early shots at presumed opponent

By MIKE DENNISON
Tribune Capitol Bureau

HELENA — Montana Republicans haven't yet chosen their nominee to run against U.S. Sen. Max Baucus, but Baucus and his Democratic supporters already have begun campaigning against who they believe it will be: Lt. Gov. Dennis Rehberg.

The Montana Democratic Party sent out 75,000 campaign fliers last weekend, comparing the two candidates on a half-dozen issues.

It carried side-by-side photos of Baucus and Rehberg, referring to each as "candidate for the U.S. Senate."

Voters in next Tuesday's Republican primary will choose the GOP nominee to challenge Baucus, a three-term incumbent. Recent polls have shown Rehberg with a substantial lead over the two other candidates in the primary, Bozeman businessman Ed Borchardt and former state Sen. Jack McDonald of Helena. Baucus is unopposed in the Democratic primary.

Baucus campaign manager Dave Hunter said Wednesday that it may be a little unusual to campaign against someone before they win their party's nomination, but that Republicans already are taking after Baucus with TV and radio advertisements.

"There's not much doubt who the Republican nominee will be," Hunter said, referring to Rehberg. "I think what everyone tries to do is define what the issues are in the race."

The flier, prepared with the help of the Baucus campaign, said Rehberg and Baucus each support

"comprehensive welfare reform" and a constitutional amendment requiring a balanced federal budget.

"Here's where we agree," it said, showing a picture of each man and a closeup of two hands clasped in a handshake.

But inside, it said "Here's where we disagree," and listed selected positions on the minimum wage, federal taxes, environmental regulations, education and "government waste."

Steve McCarter, spokesman for the Rehberg campaign, said that while the flier is generally accurate, it's a clear attempt by Baucus to put his own spin on issues of his choice. The descriptions of Rehberg's positions don't explain and his reasoning and usually oversimplify the issue, McCarter said.

He also chuckled over the fact that Baucus is campaigning against Rehberg before Rehberg has officially won the nomination. "We thank Mr. Baucus for his endorsement in our primary race."

McCarter also noted that while Baucus is touting his 1996 vote for the balanced-budget amendment, he voted against it many times before.

Hunter said the side-by-side issues comparison is in stark contrast to the "negative, mud-slinging" TV spots that the National Republican Senatorial Committee has purchased to criticize Baucus over issues such as term limits, pay raises and government spending.

McCarter said the NRSC prepared its ads independent of the Rehberg campaign, which has yet to run any ads criticizing Baucus.

Debating the issues

Here is a summary of the issues comparison in the Democratic Party campaign flier.

- **Minimum wage:** Sen. Max Baucus supports increasing the minimum wage; Lt. Gov. Dennis Rehberg opposes it. Rehberg campaign spokesman Steve McCarter said Rehberg would rather increase take-home wages through lower taxes and reducing the cost of regulation on business.

- **Federal taxes:** Baucus supported expansion of the federal "earned-income tax credit" for Montana households earning less than \$30,000; Rehberg supported the congressional Republican's 1995 budget plan, which would scale back a scheduled increase in the credit's income ceiling.

- **Environment:** Baucus sponsored the 1990 Clean Air Act, which he says has led to cleaner air and more jobs for Montanans, for instance by creating markets for low-sulfur coal. Rehberg "seeks to restrict a community's 'right to know' about toxic pollutants in our own neighborhoods," the flier said, referring to a 1985 legislative vote.

McCarter said it's debatable whether the Clean Air Act has led to cleaner air or additional jobs.

He also said Rehberg initially opposed a 1985 bill on registration of hazardous materials, because its language was unworkable. Rehberg was among 39 lawmakers who voted to kill the bill rather than bring it to the House floor for a vote.

The bill was brought to the floor, and Rehberg voted for it once it was amended.

- **Education:** Baucus sponsored a bill providing a \$5,000 tax deduction to parents putting their kids through college or vo-tech school; Rehberg supports a congressional GOP proposal to cut student loans and federal aid to schools, and voted against creation of a special state scholarship program in 1989.

McCarter said Rehberg wants to encourage more private funding of scholarships, and supports some federal assistance for schools and student loans. McCarter also questioned whether the Baucus proposal would help that many lower-income people, because they might not itemize deductions on their federal taxes.

- **Budget-cutting:** Baucus helped cut spending on federal courthouse construction and a "secret" office building proposed by federal intelligence services. Rehberg supports "spending billions of tax dollars" on development of the "Star Wars" strategic defense initiative.

McCarter said Rehberg does support a missile-defense system to defend against "nuclear attack by rogue nations," but hasn't endorsed any specific plan, and would scrutinize any proposal for possible waste.



3

UNITED STATES OF AMERICA)

) ss

State of Montana)

I, **MIKE COONEY**, the duly elected, qualified and acting Secretary of State of Montana, in accordance with the provisions of Sections 13-12-201, 13-25-101, and 13-27-501, Montana Code Annotated, do hereby certify that the attached pages contain a true, complete and correct list of the names of the persons legally nominated and entitled to appear on the ballot for the offices to be voted upon at the General Election to be held in the State of Montana on November 5, 1996. The names and offices of said candidates are arranged according to law as they should appear on the ballot.

I further certify that the attached pages also contain a true, complete and correct copy of the applicable information, as approved by the Attorney General in accordance with 13-27-313 and 13-27-315, Montana Code Annotated, to be printed upon said ballot for the three amendments to the Montana Constitution proposed by the Legislature and the five amendments to state law proposed by initiative in the words and in the order in which they should appear on the ballot.



IN WITNESS WHEREOF, I have
hereunto set my hand and affixed the
Great Seal of the State of Montana,
at Helena, the Capital, this 22nd day
of August, A.D. 1996.

Mike Cooney

MIKE COONEY
Secretary of State

4

REPORT OF RECEIPTS AND DISBURSEMENTS

For Other Than An Authorized Committee
(Summary Page)

USE FEC MAILING LABEL
OR
TYPE OR PRINT

1. NAME OF CANDIDATE OR COMMITTEE C00010033 PEGGY EGAN MONTANA STATE DEMOCRATIC CENTR AL COMMITTEE BOX 502 HELENA MT 59624	052996 p 209
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2. FEDERAL ELECTION CAMPAIGN

3. ☐ This committee has qualified as an authorized committee. (See FEC FORM 700)

4. TYPE OF REPORT

☐ April 15 Quarterly Report

☒ July 15 Quarterly Report

☐ October 15 Quarterly Report

☐ January 31 Year End Report

☐ July 31 Mid Year Report (In whole or in part only)

☐ Termination Report

Monthly Report Due On:

☐ February 28

☐ June 30

☐ October 31

☐ March 31

☐ July 31

☐ November 30

☐ April 30

☐ August 31

☐ December 31

☐ May 31

☐ September 30

☐ January 31

☐ Twelfth day report preceding _____ (Date of Election)

election on _____ in the State of _____

☐ Thirtieth day report following the General Election on _____ in the State of _____

(D) Is this Report an Amendment? ☐ YES ☒ NO

SUMMARY		COLUMN A This Period	COLUMN B Calendar Year-to-Date
1. Covering Period	6-1-96 through 6-30-96		
2. (a) Cash on Hand January 1, 1996	96		\$ 4644.20
(b) Cash on Hand at Beginning of Reporting Period		\$ 8,529.14	
3. Total Receipts (from Line 10)		\$ 145,902.09	\$ 306,982.84
4. Subtotal (add Lines 2(a) and 2(b) for Column A and Lines 2(a) and 2(b) for Column B)		\$ 152,431.23	\$ 311,027.04
5. Total Disbursements (from Line 11)		\$ 133,114.26	\$ 291,910.07
6. Cash on Hand at Close of Reporting Period (from Line 2(b) less Line 5)		\$ 19,316.97	\$ 19,316.97
7. (a) Gifts and Contributions (from Line 12) for Column A and (b) Gifts and Contributions (from Line 12) for Column B		\$ 1,734.34	
8. Subtotal (add Line 6 for Column A and Line 6 for Column B)		\$ 27,686.79	
I certify that I have completed this Report and in the best of my knowledge and belief it is true, correct and complete.		Signature of Treasurer Brod Martin, Assistant Treasurer Brod Martin Date 7/11/96 Washington, DC 20009 Tel. 202-638-6380 Local 202-638-6380	

Warning: Submission of false, inaccurate, or incomplete information may subject the person signing this Report to the penalties of 18 U.S.C. 1001.

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FEC FORM 278
(Revised 1994)

SCHEDULE B

ITEMIZED DISBURSEMENTS

Use separate attachment for each category of the Detailed Summary Page

PAGE 1 OF 2
FOR LINE NUMBER 216

Other Federal Operations Expenditures

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

NAME OF COMMITTEE (in Full)

FEC # C00010035

Montana State Democratic Central Committee

A. Full Name, Mailing Address and ZIP Code Gordon & Schwenkmeier 550 N. Continental Blvd. #180 El Segundo, CA 90245	Purpose of Disbursement TeleMarketing Disbursement for ☐ Primary ☐ General ☐ Other (specify)	Date (month, day, year) 5-16-96	Amount of Each Disbursement This Period 2,341.44
B. Full Name, Mailing Address and ZIP Code Gordon & Schwenkmeier 550 N. Continental Blvd. #180 El Segundo, CA 90245	Purpose of Disbursement TeleMarketing Disbursement for ☐ Primary ☐ General ☐ Other (specify)	Date (month, day, year) 5-24-96	Amount of Each Disbursement This Period 1,500.00
C. Full Name, Mailing Address and ZIP Code Gordon & Schwenkmeier 550 N. Continental Blvd. #180 El Segundo, CA 90245	Purpose of Disbursement TeleMarketing Disbursement for ☐ Primary ☐ General ☐ Other (specify)	Date (month, day, year) 5-24-96	Amount of Each Disbursement This Period 2,000.00
D. Full Name, Mailing Address and ZIP Code Grippe Printing & Publishing 2 Fifth Avenue P.O. Box 1331 Havre, MT 59501	Purpose of Disbursement printing Disbursement for ☐ Primary ☐ General ☐ Other (specify)	Date (month, day, year) 4-17-96	Amount of Each Disbursement This Period 214.60
E. Full Name, Mailing Address and ZIP Code Helena Industries, Inc. 1325 Helena Avenue Helena, MT 59601	Purpose of Disbursement mailing Disbursement for ☐ Primary ☐ General ☐ Other (specify)	Date (month, day, year) 4-17-96	Amount of Each Disbursement This Period 90.90
F. Full Name, Mailing Address and ZIP Code Warren Taylor 8 Kaseb Road Havre, MT 59501	Purpose of Disbursement Reimbursement Disbursement for ☐ Primary ☐ General ☐ Other (specify)	Date (month, day, year) 6-25-96	Amount of Each Disbursement This Period 300.00
G. Full Name, Mailing Address and ZIP Code The November Group 1400 I Street Suite 650 Washington, DC 20005	Purpose of Disbursement production - mail project Disbursement for ☐ Primary ☐ General ☐ Other (specify)	Date (month, day, year) 5-29-96	Amount of Each Disbursement This Period 10,000.00
H. Full Name, Mailing Address and ZIP Code The November Group 1400 I Street Suite 650 Washington, DC 20005	Purpose of Disbursement mail project Disbursement for ☐ Primary ☐ General ☐ Other (specify)	Date (month, day, year) 6-12-96	Amount of Each Disbursement This Period 10,584.00
I. Full Name, Mailing Address and ZIP Code Paul's Office Products 1609 11th Ave. Suite E Helena, MT 59601	Purpose of Disbursement mail - labels Disbursement for ☐ Primary ☐ General ☐ Other (specify)	Date (month, day, year) 6-11-96	Amount of Each Disbursement This Period 135.70

SUBTOTAL of Disbursements This Page (optional)

27,166.64

TOTAL This Period (last page this line number only)

⑤

USE REC MARKING LABEL
CR
TYPE OR PRINT

00010G73 052996 p 209
PEGGY EGAN
LOUISIANA STATE DEMOCRATIC CENTR
AL COMMITTEE
BOX 202
HELENA MT 59624

3. ☐ This committee has qualified as a nondiscriminatory committee. (see FEO FORM 202)

☐ April 1 & Quarterly Payment

- ☒ July 18 Quarterly Report
- ☐ October 18 Quarterly Report
- ☐ January 31 Year End Report
- ☐ July 31 Mid Year Report (if investment is Year Only)
- 1 2 3 4
- ☐ Termination Report

Monthly Report Due On:

- | | | |
|--------------------------------------|---------------------------------------|--------------------------------------|
| ☐ February 20 | ☐ June 20 | ☐ October 20 |
| ☐ March 20 | ☐ July 20 | ☐ November 20 |
| ☐ April 20 | ☐ August 20 | ☐ December 20 |
| ☐ May 20 | ☐ September 20 | ☐ January 21 |

☐ **Tuesday May 1964** **Page 10 of 10**

admitted on _____ to the State of _____

☐ There is no report following the General Election on

in the history of

(2) in the Report on Assassinations?



COLUMN A Covering Period		COLUMN A Total Period	COLUMN B Calendar Year-to-Date
1. Covering Period	1-1-96 through 12-30-96		
2. (a) Cash on Hand January 1, 1996			• 4044.20
(b) Cash on Hand at Beginning of Reporting Period		• 8,529.14	
3. Total Receipts (from Line 1b)		• 143,903.09	• 306,182.84
4. Subtotal (add Lines 2(a) and 2(b) for Column A and Lines 2(a) and 2(b) for Column B)		• 152,431.23	• 311,027.04
5. Total Disbursements (from Line 3b)		• 133,114.26	• 291,710.07
6. Cash on Hand at Close of Reporting Period (add Line 4 and Line 5)		• 19,316.97	• 19,316.97
7. Debt and Obligations Owed by the Association (Carry over from Schedule C under Subpart B)		• 1,734.34	
8. Debt and Obligations Owed by the Association (Carry over from Schedule C under Subpart B)		• 27,686.79	

I certify that I have completed this Report and to the best of my knowledge and belief it is true, correct and complete.

For Further Information Contact
Federal Election Commission
1101 Constitution Avenue, N.E.
Washington, D.C. 20004
Tel. (202) 696-6800
Toll Free 1-800-426-6900

Type of Field Office of Treasurer Brad Martin, Assistant Treasurer	
Signature of Treasurer <i>Brad Martin</i>	Date 7/11/96

NOTICE: Separation of this document, or information contained hereon, from the system during this period is the property of a U.S.G. Agency.

[illegible]

FEC FORM 30

TOTAL This Period (last page only)

SCHEDULE B

ITEMIZED DISBURSEMENTS

Use separate schedule for each category of the Budgetary Page

PAGE 2 OF 12
FOUR LINE NUMBER
216

Other Federal Operating Expenditures

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

NAME OF COMMITTEE (in Full) Federal ID 000010033

Montana State Democratic Central Committee

A. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Page
Paul's Office Products 1609 11th Ave Suite E Helena, MT 59601	mail-labels Disbursement for ☐ Primary ☐ General ☐ Other (specify)	6-28-96	325.00
B. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Page
United States Postal Service Last Chance Station Helena, MT 59624	mail-postage Disbursement for ☐ Primary ☐ General ☐ Other (specify)	5-24-96	2,832.91
C. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Page
United States Postal Service Last Chance Station Helena, MT 59624	mail-postage Disbursement for ☐ Primary ☐ General ☐ Other (specify)	5-24-96	3,183.92
D. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Page
	Disbursement for ☐ Primary ☐ General ☐ Other (specify)		
E. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Page
	Disbursement for ☐ Primary ☐ General ☐ Other (specify)		
F. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Page
	Disbursement for ☐ Primary ☐ General ☐ Other (specify)		
G. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Page
	Disbursement for ☐ Primary ☐ General ☐ Other (specify)		
H. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Page
	Disbursement for ☐ Primary ☐ General ☐ Other (specify)		
I. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Page
	Disbursement for ☐ Primary ☐ General ☐ Other (specify)		

SUBTOTAL of Disbursements This Page (optional)

6,341.83

TOTAL This Period (last page only)

33,508.47



FEDERAL ELECTION COMMISSION

Washington, DC 20463

September 26, 1996

Craig M. Engle, Esq.
General Counsel
National Republican Senatorial Committee
Ronald Reagan Republican Center
425 Second Street, NE
Washington, DC 20002

RE: MUR 4471

Dear Mr. Engle:

This letter acknowledges receipt on September 19, 1996, of the complaint you filed alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). The respondent(s) will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 4471. Please refer to this number in all future communications. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

A handwritten signature in dark ink, appearing to read "Colleen T. Sealander", is written over the typed name.

Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosure
Procedures



FEDERAL ELECTION COMMISSION

Washington, DC 20463

September 26, 1996

Nancy Nicholson, Treasurer
Friends of Max Baucus
Box 586
Helena, MT 59624

RE: MUR 4471

Dear Ms. Nicholson:

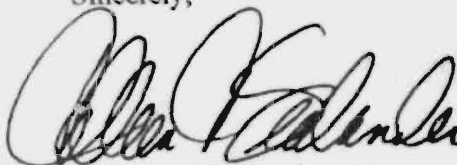
The Federal Election Commission received a complaint which indicates that Friends of Max Baucus ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4471. Please refer to this number in all future correspondence.

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

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

If you have any questions, please contact a member of the Central Enforcement Docket at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosures

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

cc: Max Baucus

98043902309



FEDERAL ELECTION COMMISSION

Washington, DC 20463

September 26, 1996

Peggy Egan, Treasurer
Montana State Democratic Central Committee
Box 802
Helena, MT 59624

RE: MUR 4471

Dear Ms. Egan:

The Federal Election Commission received a complaint which indicates that the Montana State Democratic Central Committee ("Committee") and you, as treasurer may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4471. Please refer to this number in all future correspondence.

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

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

Sincerely,

Blair F. Edwards

Enclosures

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

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WIN
★ IN ★
'96

DEMOCRATIC ★ NATIONAL ★ COMMITTEE

Donald L. Fowler, *National Chair* • Christopher J. Dodd, *General Chair*

October 8, 1996

By Hand

Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Attention: Colleen T. Sealander

Re: MUR 4471

Dear Ms. Sealander:

The undersigned represent respondents Montana State Democratic Central Committee and Peggy Egan, as Treasurer, in the above-referenced MUR. A Statement of Designation of Counsel is enclosed.

On behalf of respondents, we respectfully request an extension of fifteen (15) days in which to file a response to the complaint. The complaint raises a number of factual issues with respect to the particular circumstances of the state party mailings at issue. It will be necessary to gather information from state party officials and employees during these last few weeks leading up to the general election, a period during which these individuals are extremely busy. The additional time is necessary to allow us to identify and obtain information and documents from these individuals, in order to develop the factual information needed to prepare a meaningful response.

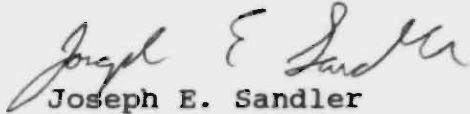
The state committee received the complaint on September 28, 1996. If the requested extension is granted, the response would be due on October 28, 1996.

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

OCT 8 11 42 AM '96

Thank you for your time and attention to this request.

Sincerely yours,



Joseph E. Sandler

Neil P. Reiff

Attorneys for Respondents Montana State
Democratic Central Committee and Peggy
Egan, as Treasurer

9604090233

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4471

NAME OF COUNSEL: A Joseph E Sandler

FIRM: Neil P Reiff
Democratic National Committee

ADDRESS: 430 S Capitol St SE
Wash D.C. 20003

TELEPHONE: (202) 863-7110

FAX: (202) 863-8081

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

10/4/96
Date

Brad Martin
Signature
Brad Martin, Assistant Treasurer

RESPONDENT'S NAME: Montana State Democratic Central Committee
Fed ID # C0001003

ADDRESS: P.O. Box 802
Helena MT 59624

TELEPHONE: HOME (406) 442-8487

BUSINESS (406) 442-9520

Carol Buckstad

Comm. exp. 11-13-99

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 11, 1996

Joseph E. Sandler, Esq.
Neil P. Reiff, Esq.
Democratic National Committee
430 S. Capitol Street, S.E.
Washington, D.C. 20003

RE: MUR 4471
Montana State Democratic Central
Committee, Peggy Egan

Dear Messrs Sandler and Reiff:

This is in response to your letter dated October 8, 1996 which we received on that same day requesting an extension to respond to the complaint filed in the above-noted matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on October 28, 1996.

If you have any questions, please contact the Central Enforcement Docket at (202) 219-3400.

Sincerely,

Erik Morrison, Paralegal
Central Enforcement Docket

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. WASHINGTON, D.C. 20005-2011
TELEPHONE: 202 628-6600 FACSIMILE: 202 434-1690

ROBERT F. BAUER
(202) 434-1602

October 15, 1996

VIA FAX AND MAIL

Ms. Colleen T. Sealander
Central Enforcement Docket
Federal Election Commission
6th Floor
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4471

Dear Ms. Sealander:

This office has been retained by Friends of Max Baucus to reply to the complaint filed in this matter.

We respectfully request an extension of time of twenty (20) days for the preparation of this response. We require this time to adequately review the issues and to answer comprehensively on behalf of this respondent. The extension we request would bring the date of the response to November 5, 1996.

Very truly yours,


Robert F. Bauer

RFB:jic

[2397]-0001/DA962890.039]

Oct 21 1 05 PM '96
FEDERAL ELECTION
COMMISSION
OFFICE OF ETHICAL
COUNSEL



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 18, 1996

Robert F. Bauer, Esq.
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

RE: MUR 4471
Friends of Max Baucus

Dear Mr Bauer:

This is in response to your letter dated October 15, 1996 which we received on October 16, 1996 requesting an extension to respond to the complaint filed in the above-noted matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on November 5, 1996.

If you have any questions, please contact the Central Enforcement Docket at (202) 219-3400.

Sincerely,

A handwritten signature in black ink, reading "Erik Morrison". The signature is written in a cursive, flowing style.

Erik Morrison, Paralegal
Central Enforcement Docket



DEMOCRATIC • NATIONAL • COMMITTEE

Donald L. Fowler, *National Chair* • Christopher J. Dodd, *General Chair*

October 28, 1996

OCT 28 4 28 PM '96

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

By Hand

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

Re: MUR 4471

Dear Mr. Noble:

On behalf of respondents Montana State Democratic Central Committee and Peggy Egan, Treasurer, we are providing this response to the complaint filed in the above-referenced MUR. This complaint challenges the mailing of a brochure, on May 24, 1996, by the Montana Democratic Party, on behalf of Max Baucus, a candidate for re-election to the U.S. Senate from Montana. The brochure compared the positions of Senator Baucus with those of his likely Republican opponent. The disbursement for the mailing was made pursuant to the "volunteer materials" exemption, 2 U.S.C. § 431(8)(B) (x) and 431(9)(B)(viii), and 11 C.F.R. §§ 100.7(b)(15) and 100.8(b)(16), and properly reported as such.

The complaint alleges that this disbursement did not qualify under the "volunteer materials" exemption because (i) Max Baucus did not officially become the nominee of the Democratic Party for U.S. Senate until after the June 4, 1996 primary, and thus was not the party's "nominee" when the mailing was made; and (ii) no volunteer activity was involved in preparing or mailing the brochure.

The complaint is meritless. First, not only was Max Baucus unopposed in the primary, but it was not even legally possible to write in or otherwise cast votes for any other candidate, in the primary. In every legal and practical sense, he was the party's nominee at the time the mailing was made. In any event, even if the primary had been contested, the "volunteer materials" exemption is available for disbursements made on behalf of a presumptive nominee, before the time of formal nomination, with the purpose and effect of influencing the general election. This disbursement clearly had such a purpose and effect.

Lawrence M. Noble, Esq.
October 28, 1996
MUR 4471
Page 2

Second, the mailing met all the criteria of the Commission's rules, 11 C.F.R. § 100.7(b)(15) and 100.8(b)(16). All aspects of the mailing were handled by volunteers. The mailing list was one owned by the state party, not a commercial list. The state party paid for the mailing with federally permissible funds, none of which were donated by a national party committee.

1. The State Party Could Make Disbursements Under the Volunteer Materials Exemption for the Mailing

The Montana Democratic Party could clearly make use of the "volunteer materials" exemption to make disbursements for volunteer materials on behalf of Max Baucus on May 24, 1996 even though the primary did not take place until June 4, 1996. The "volunteer materials" exemption applies to payment by a state party of the costs of certain materials used in connection with volunteer activities "on behalf of nominees of such parties." 2 U.S.C. §§ 431(8)(B) (x) and 431(9)(B)(viii).

In this case, Senator Baucus was the only candidate appearing on the ballot in the primary. Further, under Montana law, in order to receive even write-in votes, any other candidate would have been required to file a declaration of intent to become a write-in candidate at least 15 days before the election, i.e., by May 20, 1996. Montana Code Annotated, § 13-10-211 (1996). In fact, no one did file any such declaration by that deadline. Thus no votes, even write-in votes, for any candidate other than Senator Baucus could legally have been counted in the primary, by the time the mailing was made on May 24. See attached Declaration of Brad Martin (hereinafter "Martin Dec.") at ¶ 3.¹ In every meaningful legal as well as practical sense, then, on May 24, Senator Baucus was the nominee of the Montana Democratic Party for U.S. Senate.

Even if the primary had been contested, however, the state party could still have made disbursements pursuant to the "volunteer materials" exemption. In Advisory Opinion 1984-15, 1 CCH Fed. Elec. Camp. Fin. Guide ¶ 5766, the Commission ruled that a party committee could make expenditures on behalf of a candidate pursuant to 2 U.S.C. § 441a(d), prior to the candidate's nomination, even though that section refers to expenditures "in connection with the general election campaign." The Commission reasoned that:

¹ We are submitting a faxed version of the Martin Declaration with this response; an original signed version will be submitted within the next few days.

Lawrence M. Noble, Esq.
October 28, 1996
MUR 4471
Page 3

Where a candidate appears assured of a party's presidential nomination, the general election campaign, at least from a political party's perspective, may begin prior to the formal nomination. . . . Furthermore, because the national party committee rather than the candidate or his principal campaign committee makes these expenditures, whether a specific nominee has been chosen, or a candidate assured of nomination, at the time the expenditures are made, is immaterial. . . . The proper analytical focus is whether the expenditures . . . are made for the purpose of influencing the outcome of the general election. . . .

Id. at p. 11,069.

To be sure, the "volunteer materials" exemption refers to costs of materials used in connection with activities on "behalf of nominees," rather than "in connection with the general election". Nevertheless, the Commission's reasoning in A.O. 1984-15 is fully applicable to the "volunteer materials" exemption. There is no logical or practical difference between activities which are "on behalf of" a presumptive nominee, and those which are "in connection with the general election campaign." In both cases, the party is attempting to influence the outcome of the general election through communications which electioneer for its presumptive nominee (and/or against the anticipated opponent).

Further, the legislative history of the "volunteer materials" exemption clearly indicates that it was intended to be a substitute for section 441a(d) authority. Prior to the 1979 amendments, state and local party committees were unable to make any expenditures on behalf of their presidential nominees, precisely because those committees lacked authority to make such expenditures under section 441a(d). As the Senate Committee Report explained:

State and local party committees were . . . virtually prohibited from giving any significant support to their Presidential nominee in the general election.

The bill would permit a State or local committee of a political party to pay the costs of certain campaign material used in connection with volunteer activities on behalf of candidates, without the costs constituting a contribution of an expenditure under the act. . . .

S. Rep. 96-319, 96th Cong., 1st Sess. 4 (1979).

The legislative history thus refers to "support . . . in the general election" and "activities on behalf of candidates" as interchangeable concepts. And it would make no sense to conclude

Lawrence M. Noble, Esq.
October 28, 1996
MUR 4471
Page 4

that the scope of an exemption that was intended to substitute for section 441a(d) authority was not intended to be co-extensive with the scope of section 441a(d) itself.

For these reasons, the "volunteer materials" exemption--like section 441a(d)--must be deemed to apply to activities undertaken prior to nomination on behalf of a presumptive nominee or that have the purpose and effect of influencing the general election. In this case, it is clear that Senator Baucus, who was unopposed in the primary, was the presumptive nominee, and that the communication at issue, which compared the Senator only to his likely Republican opponent on a variety of issues, had the purpose and effect of influencing the general election. Therefore, it was lawful for the Montana Democratic Party to make disbursements for this communication, prior to the primary, pursuant to sections 431(8)(B) (x) and 431(9)(B)(viii).

2. The Mailing at Issue Met the Requirements for the Volunteer Materials Exemption

Under the "volunteer materials" exemption, 11 C.F.R. § 100.7(b)(15) and 100.8(b)(16), the terms "contribution" and "expenditure" do not include the costs of brochures used in connection with volunteer activities, provided that such costs are paid entirely from federally permissible funds, are not paid for with funds donated by a national committee and that the materials are distributed by volunteers and not by for-profit or commercial operations. The exemption does not include "direct mail," which is defined to mean "any mailing(s) made by a commercial vendor or any mailing(s) made from commercial lists."

In this case, volunteers affixed address labels, generated by the state party using its own mailing list and equipment, and sorted, bundled and delivered the mail to the post office. See Martin Dec. ¶ 4. Indeed, the only role of any commercial vendor was in the printing and folding of the brochures. Clearly, under the Commission's rulings, the brochures were used in "volunteer activity" and the mailing was a volunteer mailing, rather than "direct mail." See, e.g., MUR 3218 (volunteers stamped return address and bulk rate permit, sorted and delivered mail); MUR 3248 (New York state party volunteers wrote on or affixed address labels, sorted mail and delivered mail to post office).

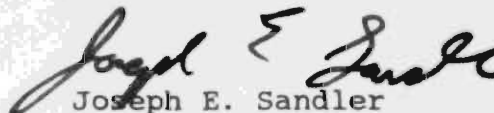
In addition, the Montana Democratic Party paid the costs of the mailing entirely with federally permissible funds, none of which were donated by the DNC or other national party committee. See Martin Dec. ¶ 5.

For these reasons, the costs of the mailing were validly

Lawrence M. Noble, Esq.
October 28, 1996
MUR 4471
Page 5

treated as being exempt from the definitions of "contribution" and "expenditure" under 11 C.F.R. § 100.7(b)(15) and 100.8(b)(16). Accordingly, the Commission should find no reason to believe that the Montana Democratic Party has violated the Federal Election Campaign Act of 1981, as amended, or the Commission's regulations, and should dismiss the complaint.

Respectfully submitted,



Joseph E. Sandler
Neil P. Reiff

Attorneys for Respondents Montana
State Democratic Central Committee
and Peggy Egan, as Treasurer

98043902402

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of:)
) MUR 4471
Montana Democratic Party)
and Peggy Egan, as Treasurer)

DECLARATION OF BRAD MARTIN

1. I currently reside at 12 South Benton, Apt D, Helena, MT 59601. I am currently the Executive Director of the Montana Democratic Party. I have held this position since June, 1993.

2. On May 24, 1996, the Montana Democratic Party ("MDP") undertook a volunteer mailing project on behalf of its presumptive nominee, Max Baucus. Approximately 73,500 pieces were mailed from Billings, Montana and Helena, Montana. The primary election was held in Montana on June 4, 1996.

3. At the time of the mailing, Max Baucus, for all intents and purposes, was the nominee of the Democratic Party for office of United States Senator. Max Baucus was the only declared candidate for nomination to the office of United States Senator, and at the time of the mailing no individual had filed a Declaration of Intent to be a write in candidate for this office (See Section 13-10-211 of the Montana Code Annotated, attached hereto as Exhibit A). "We Agree" was mailed subsequent to the expiration of the deadline for individuals to file as a write-in candidate.

3. The mailing project was undertaken, and was in full compliance with 11 C.F.R. §§ 100.7(b)(15), 100.8(b)(16) & 110.11(a)(4)(ii).

4. All facets of the "We Agree" mailing project were performed completely by volunteers. Volunteers affixed labels onto the mail piece, which were created by computers and equipment owned by the MDP, from a mailing list that is owned by the MDP. Volunteers also sorted, bundled and delivered the mail to the post office (See attached sign in sheets and photographs documenting volunteer activity with respect to this project, attached hereto as Exhibit B).

5. The committee paid all expenses in connection with "We Agree" solely with federal funds, and properly reported expenditures in connection with this mailing as operating expenditures on Line 21b of the MDP's FEC Report (See Page 17 of Campaign Guide for Political Party Committees, August, 1996). Furthermore, none of the funds used to pay for the mail piece were provided by a national party committee.

6. The mail piece contained the disclaimer, "Paid for by the

Montana Democratic Party," as required by 11 C.F.R. 5
110.11(a)(4)(ii).

7. The following vendors were used in the production and mailing
of "We Agree":

- a) The November Group, of Washington D.C. was paid
\$20,584.00 for the production and printing of the mail
piece.
- b) Paul's Office Products, of Helena, MT was paid \$460.70
for mailing labels.
- c) The United States Postal Service was paid \$6,016.83 for
postage.

I declare under penalty of perjury that the foregoing is true
and correct. Executed on October 28, 1996.



Brad Martin

98043902404

EXHIBIT A

(4) If a ballot issue is to be voted on at a primary election, it may be placed on the nonpartisan ballot or a separate ballot. A separate ballot may be a different size and color than the other ballots in the election, but the stubs shall be numbered in the same order.

(5) Each elector shall receive a set of party ballots and a nonpartisan and a ballot issue ballot if such ballots are printed.

History: En. Sec. 63, Ch. 368, L. 1969; amd. Sec. 2, Ch. 28, L. 1973; amd. Sec. 16, Ch. 365, L. 1977; R.C.M. 1947, 23-3308(1), (2), (7); amd. Sec. 69, Ch. 571, L. 1979; amd. Sec. 5, Ch. 298, L. 1987.

Cross-References

Duties of officials when election not held, 13-1-304.

Arrangement of ballots in other elections, 13-12-203.

13-10-210. Repealed. Sec. 407, Ch. 571, L. 1979.

History: En. Sec. 64, Ch. 368, L. 1969; R.C.M. 1947, 23-3309.

13-10-211. Declaration of intent for write-in candidates. (1) Except as provided in subsection (4), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. Except as provided in subsection (2), the declaration must be filed no later than 5 p.m. on the 15th day before the election and contain:

- (a) the candidate's name;
- (b) the candidate's mailing address;
- (c) a statement declaring the candidate's intention to be a write-in candidate;
- (d) the title of the office sought;
- (e) the date of the election;
- (f) the date of the declaration; and
- (g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, less than 15 days before the election, a candidate for the office that the write-in candidate is seeking:

- (a) dies;
- (b) withdraws from the election; or
- (c) is charged with a felony offense.

(3) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with his office. Each election administrator and school district clerk shall notify the election judges in their county or district of the names of write-in candidates who have filed a declaration of intent.

(4) The requirements in subsection (1) do not apply to a write-in candidate seeking election:

- (a) as a precinct committeeman or committeewoman in a primary election; or
- (b) to an office for which no candidate has filed a declaration or petition for nomination or a declaration of intent.

History: En. Sec. 1, Ch. 391, L. 1989.

Cross-References

Counting of write-in votes, 13-15-202.

EXHIBIT B

Helena

15 May - "We agree"

Name	Adr	Phone
Bob Campbell	601 Broadway	443-5276
George St. Bonnes	3806 Barrett	442-4478
Holly Luck		
Doug Mitchell		
John A. Smith	208 Madison	442-9560
Janice		
Joe Kerwin		
Ed Tinsley		
Bill Lombardi		
Gary Spazich		
Marlene Kaudal	PO Box 5472	443.5223
Cathy Wilberg		
Patty Keebler		
Pam Egan		
Darnell Holzer		
Chelsey Spurzem		
Tony Jenson		

B. Hings

2237004

2237004

2 people came in the afternoon

Don Crilly

Devon Crilly

> 6501 Danford Rd 59106

9 8 7 6 5 4 3 2 1 0

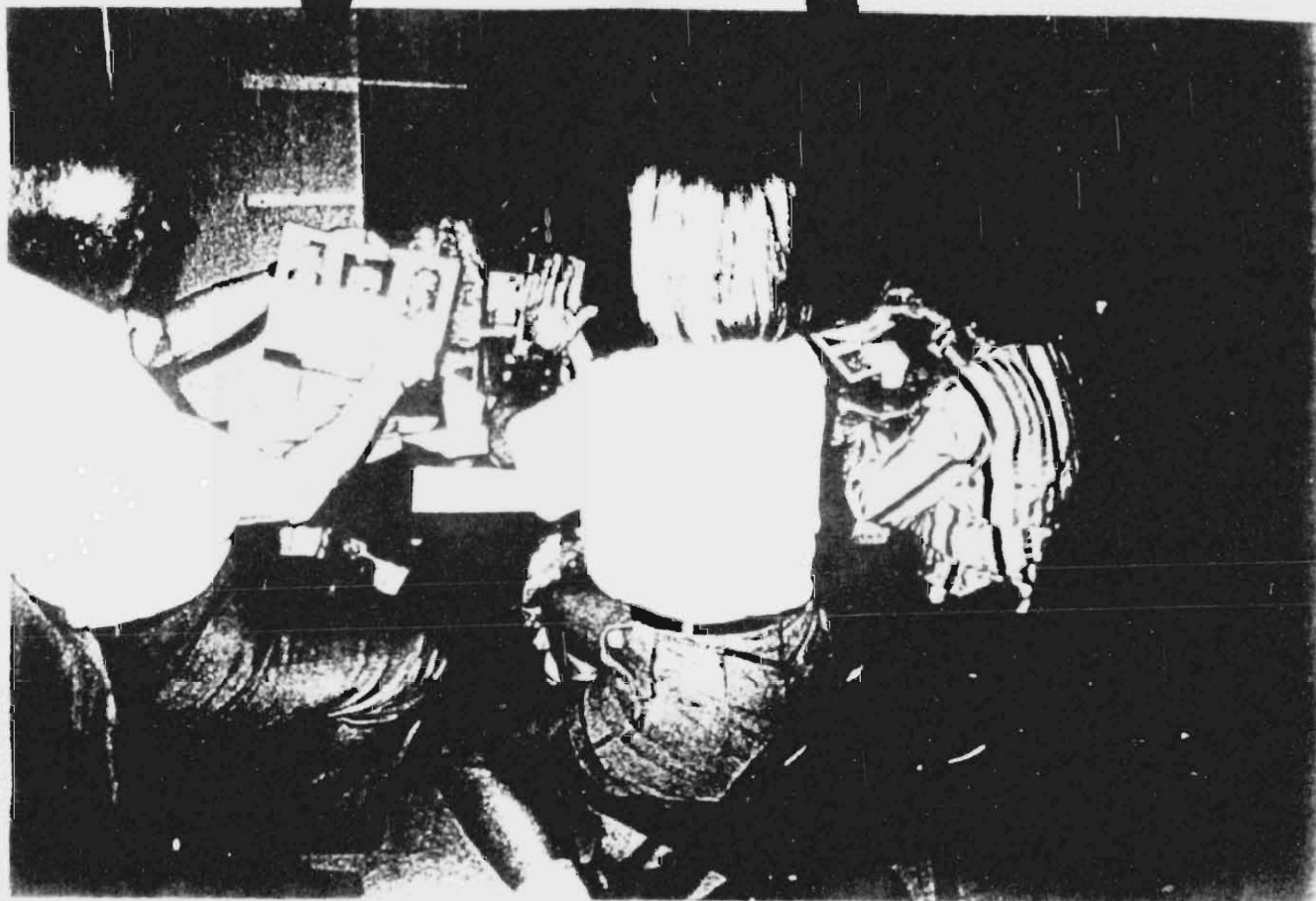
Monday, May 30th, Jalor Temple

Billings

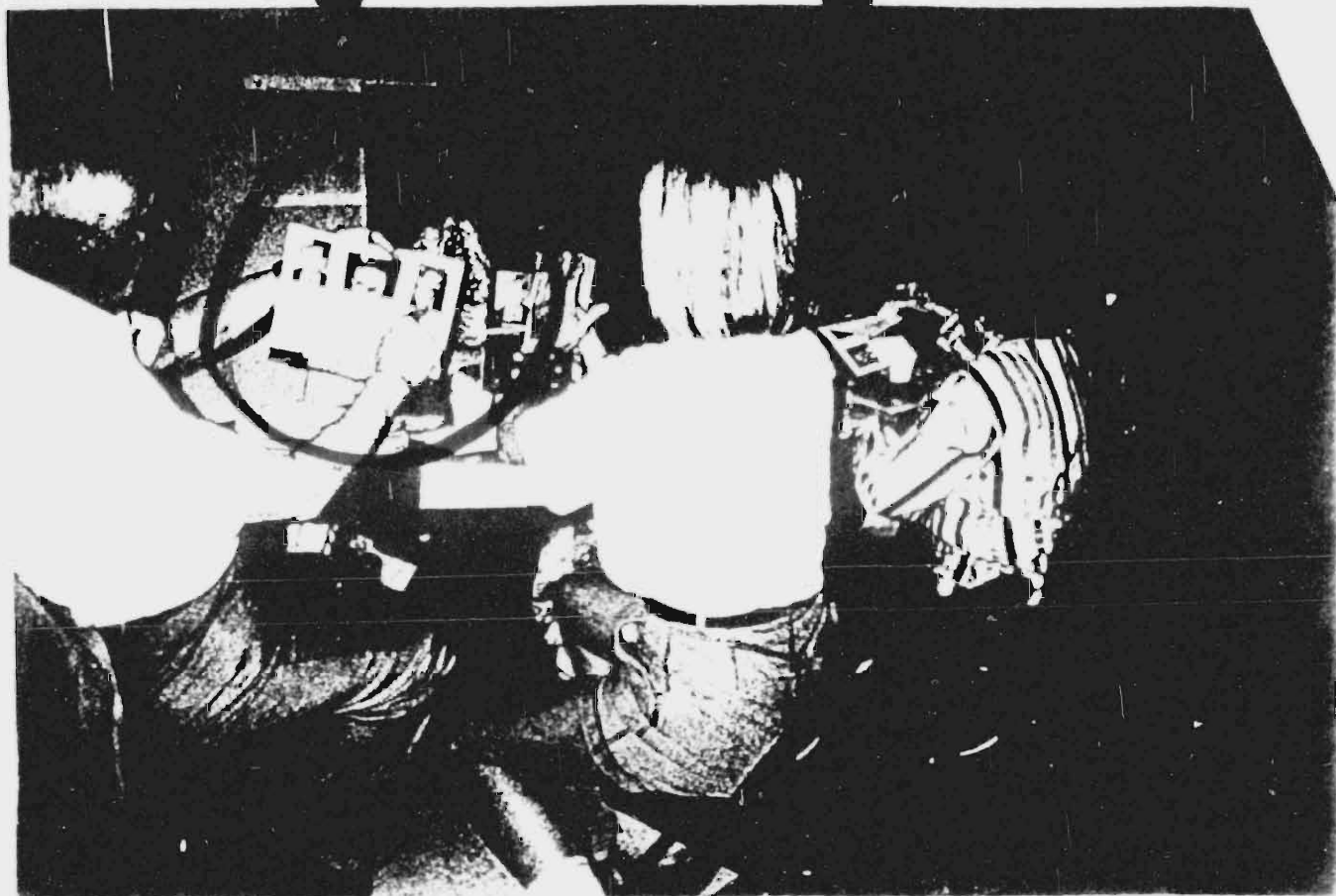
530 S. 27th St

Blgo MT 59101

NAME	ADDRESS
Delores Merkel	10 Meadowbrook Dr. Billings
Alfred Merkel	10 " " " " 59102
Lena Masuale	30 Heather Rd - Billings, MT 59105
Luora Weist	29 Heather Rd Billings Mt 59105
Hazel W. White	932 Crest Dr. 59105
Sophia Brown	1206 Princeton 59102
Clinton + Pat Clifton	825 Ave D. # 324 59102
Helen Meyer	833 Ave. D. #331 59102 59102
Shirley Fredrickson	4316 Brackton Ave SW 59101
Jean Erickson	715 S. 28 th # 410 59101
Mabel H. Avila	3801 N. Tanager Ln. 59102-5901
Frank Luje	2243 George 656-6817
Teddy Bertrith	223 N. 23 rd #6 59101
Rachel Hofferber	14 Prince Charles 59105
Lou Howe	2510 Constellation Tr. 59105
Norma Brockel	115 N. 24 59101
Elaine Krupper	1612 Wyoming Ave 59102
Lora Mae Howe	2510 Constellation Trl. 59105
Michael Lange	1624 Cook Ave 59102
Bob Papin	2039 Ave B Billings MT 59102
Kathryn Putnam	813 Grand Ave. ✓
Fran Ducharme	240 Foster Ln 59101
Tommy Schmidt	543 Rimwood Rd 59102
George Neelington	Mt. Vernon, VA. ?
Alma L. Williams	1530 Cheryl St 59105
Anders Gustad	1503 Cheryl St 59105
	(over)



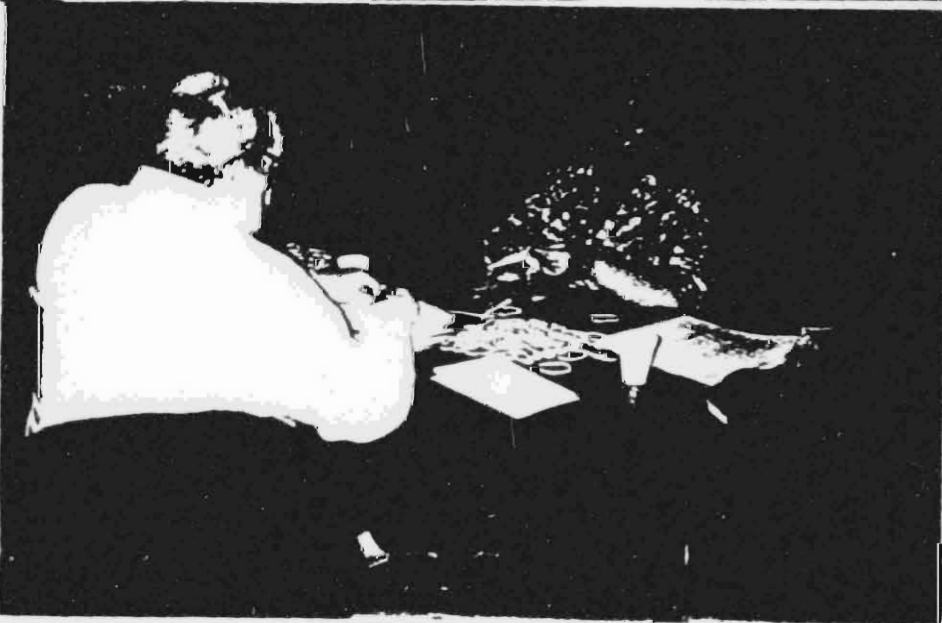
98043204402



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B. Hings





PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. WASHINGTON, D.C. 20005-2011
TELEPHONE: 202 628-6600 · FACSIMILE: 202 434-1690

ROBERT F. BAUER
(202) 434-1602

November 6, 1996

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

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FEDERAL ELECTION
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COUNSEL
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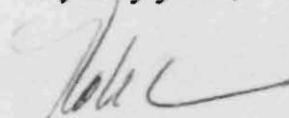
Re: MUR 4471

Dear Mr. Noble:

The Friends of Max Baucus and its Treasurer join in the reply previously filed by the Montana State Democratic Party in this matter. The Party's reply, addressing the Party mailing which is the subject of the Complaint, demonstrates that this mailing did not in any way violate the Act or Commission regulations. The Complaint does not state a claim against the Party, and cannot therefore state a claim against the Baucus respondents.

The Complaint should be dismissed.

Very truly yours,



Robert F. Bauer
Counsel to Respondents

RFB:smb

[23971-0001/DA963110.058]

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

FIRST GENERAL COUNSEL'S REPORT

MUR: 4471
DATE COMPLAINT FILED: 9/19/96
DATE OF NOTIFICATION: 9/26/96
DATE ACTIVATED: 1/15/98

STAFF MEMBER: Eugene H. Bull

COMPLAINANT(S): Craig M. Engle

RESPONDENT(S): Montana State Democratic Central Committee
and Rhonda Whiting, as treasurer
Friends of Max Baucus and Randall Bishop,
as treasurer

RELEVANT STATUTE(S): 2 U.S.C. § 431(8)(B)(x)
2 U.S.C. § 431(9)(B)(viii)
2 U.S.C. § 434(b)
2 U.S.C. § 441a(a)(2)
2 U.S.C. § 441a(f)
2 U.S.C. § 441d(a)
11 C.F.R. § 100.7(b)(15)
11 C.F.R. § 100.8(b)(16)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

Craig M. Engle (the "Complainant"), General Counsel of the National Republican Senatorial Committee filed a complaint alleging that the Montana State Democratic Central Committee and Rhonda Whiting, as treasurer (the "Montana Democratic Party" or "MDP") made an excessive in-kind contribution to the Friends of Max Baucus and Randall Bishop, as treasurer (the "Baucus Committee"), and that both committees did not properly report this transaction.

The excessive in-kind contribution allegedly was made as a result of a "direct mail advertising pamphlet" entitled "We Agree," which the Montana Democratic Party mailed to approximately 75,000 Montana addresses on Senator Baucus's behalf. The Complainant alleges that the pamphlet was authorized by the Baucus Committee.

The pamphlets were mailed on May 29, 1996, five days prior to the June 4, 1996 primary election. The Complainant alleges that under Montana law, voters were allowed to write-in the names of and vote for other individuals besides Senator Baucus in the primary election. He further alleges, based upon information and belief, that several individuals, as well as Senator Baucus, did receive write-in votes. On this basis, the Complainant argues that Senator Baucus was not the MDP's nominee at the time the pamphlets were mailed, and thus, the mailing was not covered by the "volunteer materials" exemption. In fact, the Complainant states that Senator Baucus's nomination as the Democrat nominee did not become official until August 22, 1996.

The pamphlets at issue contained a disclaimer identifying the Montana Democratic Party as the sole sponsor of the mailing, without identifying the Baucus Committee as having authorized the mailing or benefited from it. Moreover, the Complainant asserts that the pamphlets utilized pre-printed mailing labels that were produced by a high-speed commercial printer and not hand addressed by volunteers. The Complainant further alleges that the labels were pre-sorted by a mail house using a nine digit zip code.

The Montana Democratic Party's 1996 July Quarterly Report discloses, on Schedule B, the following disbursements: \$10,000 and \$10,584, made to the "November Group" on May 29, 1996 and June 12, 1996, respectively, in connection with the pamphlets at issue; \$6,016.83 to the United States Postal Service on May 24, 1996, for postage.

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According to the Complainant, during the relevant period, the "November Group" was a vendor to both the Montana Democratic Party and the Baucus Committee. The 1996 April Quarterly Report of the Baucus Committee discloses a disbursement of \$18,000 to the "November Group" for direct-mail fundraising. Additionally, the Complainant alleges that the Baucus Committee's 1996 Pre-Primary Report discloses disbursements of \$425 for "printing" and \$5,000 for "professional services" to the "November Group," but fails to either disclose the receipt of an in-kind contribution from or a coordinated expenditure with the MDP.

II. FACTUAL AND LEGAL ANALYSIS

A. Response

The Baucus Committee joins in the response filed on behalf of the Montana Democratic Party. The response states that the disbursements for the pamphlets were made "pursuant to the 'volunteer materials' exemption, 2 U.S.C. § 431(8)(B)(x) and (9)(B)(viii), and 11 C.F.R. §§ 100.7(b)(15) and 100.8(b)(16), and properly reported as such." According to the MDP, all aspects of the mailing were handled by volunteers; the mailing list was owned by the MDP, not a commercial list; and the MDP paid for the mailing with federally permissible funds, none of which was donated by a national party committee. Volunteers affixed address labels, generated by the MDP's own mailing list and equipment. Volunteers also sorted, bundled, and delivered the mail to the post office. The response avers that the only role of any commercial vendor was in the printing and folding of the brochures.

The response includes an unsworn declaration from the MDP's Executive Director that Max Baucus was unopposed in the primary election, and that it was not legally possible to write in or otherwise cast votes for any other candidate, because no other candidate had filed the required declaration of intent to become a write-in candidate within at least 15 days of the

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election, as required by Montana law. See Montana Code Annotated, § 13-10-211 (1996). Thus, the response argues that in every legal and practical sense, Senator Baucus was the nominee of the Montana Democratic Party at the time that the pamphlets were mailed. Further, the response contends that even if the primary had been contested, the "volunteer materials" exemption is available for disbursements made on behalf of the presumptive nominee, before the time of formal nomination, with the purpose and effect of influencing the general election. As support for this proposition, the response cites the Commission's reasoning in Advisory Opinion ("AO") 1984-15, an opinion which addressed the applicability of Section 441a(d) limits to disbursements made by a national party committee prior to the general election.

B. Applicable Law

The Federal Election Campaign Act of 1971, as amended ("the Act") limits to \$5,000 per election the amount which any multicandidate committee may contribute to a candidate and his or her political committee. 2 U.S.C. § 441a(a)(2). 2 U.S.C. § 441a(f) prohibits political committees from knowingly accepting contributions or making expenditures in violation of the statutory limitations.

The Act defines "contribution" as including "any gift, subscriptions, loan, advance, . . . or anything of value made by any person for the purpose of influencing any election for Federal office . . ." 2 U.S.C. § 431(8)(A)(i). It defines "expenditure" as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office . . ." 2 U.S.C. § 431(11). Both the terms "contribution" and "expenditure" are defined to exclude the payment by a state committee of a political party of the costs of campaign materials (such as pins, posters, brochures, etc.) used

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by such committee in connection with volunteer activities on behalf of nominees of such party. See 2 U.S.C. § 431(8)(B)(x) and (9)(B)(viii)—referred to as the “volunteer materials” exemption. Materials purchased with funds donated by a national party committee to a state committee for the purchase of such materials do not qualify for the exemption. 11 C.F.R. § 100.1(b)(15)(vii).

In June 1996, the Supreme Court in *Colorado Republican Federal Campaign Committee v. FEC* (“*Colorado Republicans*”) rejected the Commission’s conclusion at 11 C.F.R.

§ 110.7(a)(5) that party committees, by virtue of their close relationship with candidates, are incapable of making independent expenditures, and that, as a result, all expenditures made by such committees in support of a candidate should be deemed “coordinated” with the candidate. 116 S.Ct. 2309 (1996). Rather, the Court held that political parties can make expenditures independently of candidates which are not subject to the limitations of 2 U.S.C. § 441a(d). *Id.* at 2315-2316. Actual coordination is now an essential element of any determination that expenditures are subject to the limitations of Section 441a(d).

Definitions of “coordination” are found only indirectly in the Act and in the Commission’s regulations. 2 U.S.C. § 441a(a)(7)(B)(i) states that “expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate” See also *Buckley v. Valeo*, 424 U.S. 1, 46 (1976). 2 U.S.C. § 431(17) and 11 C.F.R. § 109.1(a) and (b)(4) each address what constitutes coordination in the context of defining an expenditure as not independent when it is “made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate.” Section 109.1(b)(4) then further defines

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the concept of non-independent, and therefore coordinated, expenditures related to communications as follows:

"Made with the cooperation or with the consent of

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

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

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

In *Colorado Republicans*, the Supreme Court addressed the issue of coordination in a case involving expenditures by a state party committee for an advertising campaign. See *Colorado Republicans*, 116 S.Ct. 2309. The Court found the subject advertising campaign to have been independent, because the statements cited as evidence of coordination were "general descriptions of party practice," and did not "conflict with, or cast significant doubt upon, the uncontroverted direct evidence" that the campaign at issue had been "developed . . . independently and not pursuant to any general or particular understanding with a candidate." *Id* at 2315. Thus, as already noted, since *Colorado Republicans*, it is no longer presumed that party committees have coordinated with the candidates within their party on the strength of their

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political affiliation.¹ Instead, coordination between the party committees and the beneficiary candidate or his or her agent must be established. When such coordinated expenditures by a party committee, alone or in combination with direct contributions to a candidate made pursuant to Section 441a(a)(2)(A), exceed the combined limitations of Sections 441a(a)(2)(A) and 441a(d), violations of 2 U.S.C. § 441a(a)(2)(A) by the party committee and of 2 U.S.C. § 441a(f) by the recipient candidate committee result.²

Should a state party committee elect not to make directly the expenditures permitted by Section 441a(d), it may assign its expenditure limitation to a national Senatorial campaign committee, thereby designating that committee as its agent for purposes of making coordinated party expenditures. *FEC v. Democratic Senatorial Campaign Committee*, 484 U.S. 27 (1981). When a state party committee follows this course with respect to a particular election, its Section 441a(d) limitation is effectively transferred to its agent, leaving the state party committee able to make only general election contributions to its nominee within the 2 U.S.C. § 441a(a) limitations. Under these circumstances any state party committee expenditures made in coordination with a candidate would be no different than any other in-kind contributions limited

¹ The Commission's regulation at 11 C.F.R. § 109.1(b)(4)(i)(B) provides a different presumption that expenditures are coordinated if they are made by or through any person who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent.

² The Supreme Court left unanswered in *Colorado Republicans* the question of whether party expenditures which are coordinated with candidates can be constitutionally limited by Section 441a(d), and remanded the case to the lower courts to address this particular issue. 518 U.S. at 623; 116 S.Ct. at 2319. Thus, absent further judicial interpretation in this or another context, Section 441a(d) limitations are applicable to party committee expenditures which have been coordinated with a candidate.

by 2 U.S.C. § 441a(a), and, if made in an aggregate sum exceeding \$5,000, would become excessive contributions made by the party committee and received by the candidate committee.

In addition to the issue of coordination, an important element in determining whether the limitations at 2 U.S.C. § 441a(d) and/or 2 U.S.C. § 441a(a) apply to particular expenditures is the content of the party committee messages being addressed. "Independent expenditures," which may be made without limit, include only expenditures which "expressly advocat[e] the election or defeat of a clearly identified candidate." 2 U.S.C. § 431(17). The Act does not, however, impose the same express advocacy requirement upon the party expenditures permitted by, but also limited by, 2 U.S.C. § 441a(d), nor upon contributions subject to the limitations of 2 U.S.C. § 441a(a). As stated above, the Act's definitions of both "contribution" and "expenditure" employ the phrase "for the purposes of influencing any election for Federal office" The Commission has applied a "for purposes of influencing" test in the context of 2 U.S.C. § 441a(a) contribution limitations and a "clearly identified candidate/electioneering message" test in the context of 2 U.S.C. § 441a(d) expenditures.³ The most significant difference between these tests for the contents of communications has been that, for purposes of the Section 441a(d) limitations, an "electioneering message" must have been accompanied by a reference to

³ In *Colorado Republicans*, the Supreme Court did not address the appropriate measure of the content of communications subject to Section 441a(d) limitations. However, the Court of Appeals in its earlier decision in *FEC v. Colorado Republican Federal Campaign Committee*, 59 F.3d 1015 (10th Cir. 1995), had reversed the District Court's finding that, in order for expenditures for advertisements to have been made "in connection with" a general election and thus limited by 2 U.S.C. § 441a(d), the advertisements had to constitute "express advocacy." Rather, the Court of Appeals expressly deferred to the Commission's long-standing "construction of § 441a(d) as regulating political committee expenditures depicting a clearly identified candidate and conveying an electioneering message" 59 F. 3d at 1022, citing Advisory Opinion 1984-15. Although the Supreme Court in *Colorado Republicans* vacated the Court of Appeals' opinion on other grounds, on the issue of "electioneering message" as the standard for content, the Court was silent.

a "clearly identified candidate,"⁴ while Section 441a(a) expenditures/in-kind contributions for communications made "for purposes of influencing a federal election" have not been so limited. However, as a result of the Supreme Court's requirement in *Colorado Republicans* of actual coordination before party expenditures may be deemed subject to Section 441a(d) limitations, there has come about a convergence, with respect to coordination, of the standards for coordinated party expenditures limited by Section 441a(d) and for in-kind contributions limited by Section 441a(a). Because of this convergence, excessive Section 441a(d) expenditures are now, as stated above, considered Section 441a(a) in-kind contributions and are thus subject to the Section 441a(a) limitations.

In light of this new, common standard of actual coordination with regard to both Section 441a(a) in-kind contributions and Section 441a(d) party expenditures, the Commission has decided to apply common standards to the contents of party committee communications financed by these two categories of expenditures. Hence, in the context of party committee expenditures for communications, the standard of "for purposes of influencing a federal election," as this phrase defines Section 441a(a) "contributions" and "expenditures," should encompass the same elements as those required for a communication financed pursuant to Section 441a(d), i.e., both an electioneering message and a clearly identified candidate.⁵

⁴ 2 U.S.C. § 431(18) defines "clearly identified" as meaning "(A) the name of the candidate involved appears; (B) a photograph or drawing of the candidate appears; or (C) the identity of the candidate is apparent by unambiguous reference." See also 11 C.F.R. § 100.17. In *U.S. v. United Auto Workers*, 352 U.S. 567, 587 (1957), the Supreme Court defined "electioneering message" as "statements 'designed to urge the public to elect a certain candidate or party'."

⁵ This change in the standard of content is intended to apply only to party committees and only to the communications financed by such committees. In the first regard, separate treatment of party committees is justified in light of the special considerations given such committees in

C. Analysis

This matter hinges on the applicability of the "volunteer materials" exemption. If the exemption applies to the instant matter, then the Montana Democratic Party did not violate the Act by making the expenditures at issue, neither did the Baucus Committee violate the Act by knowingly accepting an excessive in-kind contribution. On the other hand, if the "volunteer materials" exemption does not apply to the instant matter, the expenditures may have constituted an excessive in-kind contribution to the Baucus Committee if they were coordinated with the Baucus Committee and involved an electioneering message with respect to Senator Baucus.

The expenditures made by the Montana Democratic Party on the pamphlets and mailing at issue may have failed to meet at least two of the requirements for applicability of the "volunteer materials" exemption. First, the Commission's regulations provide that materials purchased with funds donated by a national party committee do not qualify for the "volunteer materials" exemption. See 11 C.F.R. § 100.7(b)(15)(vii). Second, expenditures made pursuant to the "volunteer materials" exemption must be made on behalf of a nominee of the party. See 2 U.S.C. § 431(8)(B)(x) and (9)(B)(viii).

the past. For example, Section 441a(d) was intended by Congress to provide party committees with additional possibilities for assisting specific candidates, possibilities not available to other political committees. The standard for the content of Section 441a(d) party communications, with its "clearly identified candidate" and "electioneering message" components, grew in turn out of the need to distinguish between party communications which meet the Section 441a(d) criteria, and are thus limited, allocable to specific candidates and 100% federal, and another special category of party expenditures - those for generic communications which, although allocable between a party committee's federal and non-federal accounts, are unlimited in amount and not allocable between or among specific candidates. See 11 C.F.R. §§ 106.1 and 106.5 as discussed below. Expenditures for non-communication purposes, e.g., for equipment, travel, telephone charges, etc., are not affected by this change. In these instances, "for purposes of influencing a federal election" will continue not to require a "clearly identified candidate."

In the instant matter, there is strong evidence that the Montana Democratic Party used national party funds to pay for the pamphlets and mailing at issue—despite its assertions to the contrary. The MDP's 1996 July Quarterly Report indicates that it received a combined transfer of \$26,198.28 from the Democratic National Committee ("DNC") between May 15th and June 17th of 1996. Between May 24th and June 28th of 1996, the MDP expended a total of \$27,061.53 on the pamphlets and mailing at issue—an amount that differs from the total transfers received from the DNC during the period by only \$863.25. See attachment 1. Although the dates and amounts of the transfers do not coincide exactly with those of the expenditures, the overall similarity in the timing and total dollar amount of transfers and expenditures suggests that the two were related. Moreover, the MDP began the second quarter of 1996 in which these expenditures were made with only \$8,529 on hand, and its July Quarterly Report does not itemize the majority of the non-national party committee funds received in that quarter. Thus, the report does nothing to erase the appearance that national party funds were expended in connection with the pamphlets and mailing at issue.

In addition to the failure of the expenditures at issue to qualify for the "volunteer materials" exemption if national party funds were used, there is a serious question of whether the expenditures also failed to qualify for the exemption because it appears they were not made on behalf of the MDP's nominee. At the time the expenditures were made on behalf of Senator Baucus, the Montana Democratic primary was still between five and eleven days away. The MDP argues on the basis of AO 1984-15 that the "volunteer materials" exemption is available for expenditures made on behalf of a candidate who is a political party's "presumptive" nominee. However, the MDP's reliance on the advisory opinion is misplaced. First, the advisory opinion dealt with expenditures in the Section 441a(d) context, whereas the MDP seeks to apply the

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opinion's holding outside that context.⁶ Moreover, the opinion also specifically distinguished the broader meaning of the term "candidate" in Section 441a(d) with the more narrow use of the term "nominee" in other contexts, explicitly 2 U.S.C. § 431(8)(B)(x) and (9)(B)(viii), the "volunteer materials" exemption relied upon by the MDP. Thus, the MDP errs in asserting that the holding with respect to the broader term "candidate" in one particular context is applicable to the more narrow term "nominee" in a different context, when the holding itself specifically distinguishes both the context and the scope of the two terms. In addition, this Office has not found any justification in the Act, legislative history, Commission's regulations, or advisory opinions for extending the "volunteer materials" exemption to expenditures made on behalf of an individual who is not the actual nominee of a political party. As the MDP cannot attempt to justify the \$27,061.53 in expenditures on behalf of the Baucus Committee under its Section 441a(d) limit because that limit was apparently assigned to the DSCC, the expenditures were large enough to result in an excessive in-kind contribution to the Baucus Committee in violation of Section 441a(a)(2).

However, because after *Colorado Republicans* there is no longer a presumption that all party expenditures relating to an identified candidate are coordinated, if the Commission should find that the "volunteer materials" exemption does not apply to the expenditures at issue, the expenditures would be an excessive in-kind contribution to the Baucus Committee only if they were actually coordinated with that committee and involved and electioneering message with respect to a clearly identified candidate.

⁶ The MDP has not acknowledged or contended that it spent any money on behalf of Senator Baucus in connection with Section 441a(d) limits. In fact, the MDP's Section 441a(d) limit in connection with the Baucus candidacy was apparently assigned to the Democratic Senatorial Campaign Committee which spent \$104,959 on behalf of the candidate.

Relevant disclosure reports confirm the allegation in the complaint that the Baucus Committee and the MDP shared a common vendor—the November Group—and thus, raise a presumption of coordination separate from the one disapproved in *Colorado Republicans*. See 11 C.F.R. § 109.1(b)(4)(i)(B). During an investigation, this Office would seek to determine whether, in fact, the MDP and Baucus Committee coordinated the expenditures at issue through a common vendor or by some other means.

Further, the pamphlets at issue involve an electioneering message with respect to clearly identified candidates. Photographs of Senator Baucus and the Republican challenger are featured prominently throughout the pamphlets. The pamphlets present Senator Baucus's and the challenger's positions on a number of issues such that it is unmistakable that Senator Baucus's are the preferred ones. Moreover, the "vote" boxes which precede Senator Baucus's positions are check-marked whereas the "vote" boxes which precede the challenger's positions are left blank. Thus, it appears clear from the overall presentation in the pamphlets that Senator Baucus, and not the challenger, is the candidate of choice.

In light of the foregoing, this Office recommends that the Commission find reason to believe that the Montana State Democratic Committee and Rhonda Whiting, as treasurer, violated 2 U.S.C. §§ 441a(a)(2) and 434(b) in connection with mailing pamphlets to 75,000 Montana addresses on Senator Baucus's behalf and failing to report it. This Office also recommends that the Commission find reason to believe that the Friends of Max Baucus and Randall Bishop, as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b) by knowingly accepting an excessive in-kind contribution and failing to report it.

III. RECOMMENDATIONS

1. Find reason to believe that the Montana State Democratic Committee and Rhonda Whiting, as treasurer, violated 2 U.S.C. §§ 441a(a)(2) and 434(b).
2. Find reason to believe that the Friends of Max Baucus and Randall Bishop, as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b).
3. Authorize the Audit Division to conduct an analysis of the Montana State Democratic Committee to help determine whether it used national party money in connection with the mailing on behalf of the Baucus campaign.
4. Approve subpoenas for documents and orders for written answers to the Montana State Democratic Committee and Rhonda Whiting, as treasurer, Friends of Max Baucus and Randall Bishop, as treasurer, and the November Group.
5. Approve the attached Factual and Legal Analyses (2).
6. Grant the Office of the General Counsel contingent authority to file suit to enforce the Subpoenas and Orders against any respondent or witness who fails to comply with them.

7. Approve the appropriate letters.


Date

10/14/98
Lawrence M. Noble
General Counsel

Attachments:

1. Comparison Chart of the DNC transfers and the MDP expenditures.
2. Factual and Legal Analyses (2)
3. Subpoenas and Orders (3)

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 4471
Montana State Democratic)
Central Committee and Rhonda)
Whiting, as treasurer;)
Friends of Max Baucus and)
Randall Bishop, as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on October 20, 1998, do hereby certify that the Commission decided by a vote of 6-0 to reject the recommendations in the General Counsel's October 14, 1998 report and instead take the following actions in MUR 4471:

1. Find no reason to believe, based on the probable application of the volunteer materials exemption.
2. Close the file.
3. Send appropriate letters.

Commissioners Elliott, Mason, McDonald, Sandstrom, Thomas, and Wold voted affirmatively for the decision.

Attest:

10-21-98
Date

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

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 9, 1998

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Craig M. Engle, Esq.
General Counsel
National Republican Senatorial Committee
Ronald Reagan Republican Center
425 Second Street, N.E.
Washington, DC 20002

RE: MUR 4471

Dear Mr. Engle:

On October 20, 1998, the Federal Election Commission reviewed the allegations in your complaint dated September 18, 1996, and found that on the basis of the information provided in your complaint, and information provided by the respondents, Friends of Max Baucus and Randall Bishop, as treasurer, and the Montana State Democratic Central Committee and its treasurer, there is no reason to believe Friends of Max Baucus and Randall Bishop, as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b). Also there is no reason to believe the Montana State Democratic Committee and its treasurer violated 2 U.S.C. §§ 441a(a)(2) and 434 (b). Accordingly, on October 20, 1998, the Commission closed the file in this matter. A Statement of Reasons providing a basis for the Commission's decision will follow.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Lawrence M. Noble
General Counsel



BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report
Certification of Commission action

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

Robert F. Bauer, Esq.
Perkins Coie
607 Fourteenth Street, N.W.
Washington, DC 20005

November 9, 1998

RE: MUR 4471
Friends of Max Baucus
and Randall Bishop, as treasurer

Dear Mr. Bauer:

On September 26, 1996, the Federal Election Commission notified your clients, Friends of Max Baucus and Randall Bishop, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

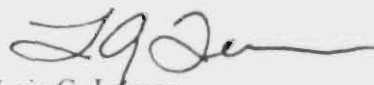
On October 20, 1998, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe they violated 2 U.S.C. §§ 441a(f) and 434(b). Accordingly, the Commission closed its file in this matter. A Statement of Reasons explaining the Commission's decision will follow.

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

If you have any questions, please contact Eugene Bull, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Lawrence M. Noble
General Counsel



BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

Joseph E. Sandler, Esq.
Democratic National Committee
430 South Capitol Street, S.E.
Washington, DC 20003

November 9, 1998

RE: MUR 4471
Montana State Democratic Committee
and its treasurer

Dear Mr. Sandler:

On September 26, 1996, the Federal Election Commission notified your clients, Montana State Democratic Committee and its treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On October 20, 1998, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe they violated 2 U.S.C. §§ 441(a)(2) and 434(b). Accordingly, the Commission closed its file in this matter. A Statement of Reasons explaining the Commission's decision will follow.

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

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If you have any questions, please contact Eugene Bull, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Lawrence M. Noble
General Counsel



BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION

Washington, DC 20463

November 24, 1998

Craig M. Engle, Esq.
General Counsel
National Republican Senatorial Committee
Ronald Reagan Republican Center
425 Second Street, N.E.
Washington, DC 20002

RE: MUR 4471

Dear Mr. Engle:

By letter dated November 9, 1998, the Office of the General Counsel informed you of determinations made with respect to the complaint filed by you against Friends of Max Baucus and Randall Bishop, as treasurer, and the Montana State Democratic Committee and its treasurer. Enclosed with that letter were copies of the First General Counsel's Report and Certification of the Commission's action.

Enclosed please find a Statement of Reasons from all six Commissioners explaining their vote. This document will be placed on the public record as part of the file of MUR 4471.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eugene Bull".

Eugene Bull
Attorney

Enclosure
Statement of Reasons



FEDERAL ELECTION COMMISSION

Washington, DC 20463

November 24, 1998

Robert F. Bauer, Esq.
Perkins Coie
607 Fourteenth Street, N.W.
Washington, DC 20005

RE: MUR 4471
Friends of Max Baucus
and Randall Bishop, as treasurer

Dear Mr. Bauer:

Enclosed please find a Statement of Reasons from all six Commissioners explaining their vote. This document will be placed on the public record as part of the file of MUR 4471.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eugene Bull".

Eugene Bull
Attorney

Enclosure
Statement of Reasons

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

CLOSED

November 24, 1998

Joseph E. Sandler, Esq.
Democratic National Committee
430 South Capitol Street, S.E.
Washington, DC 20003

RE: MUR 4471
Montana State Democratic Committee
and its treasurer

Dear Mr. Sandler:

Enclosed please find a Statement of Reasons from all six Commissioners explaining their vote. This document will be placed on the public record as part of the file of MUR 4471.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in dark ink, which appears to read "Eugene Bull", is written over a horizontal line.

Eugene Bull
Attorney

Enclosure
Statement of Reasons

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

MUR 4471

Montana State Democratic Committee)
and Rhonda Whiting, as treasurer ("MDP"))

Friends of Max Baucus and Randall Bishop,)
treasurer)

STATEMENT OF REASONS

On October 20, 1998, the Commission, by a vote of 6-0, rejected the General Counsel's recommendation to find reason to believe that the Montana State Democratic Committee and Rhonda Whiting, as treasurer (the "MDP"), and the Friends of Max Baucus and Randall Bishop, as treasurer, violated 2 U.S.C. §§ 441a(a)(2) and 441a(f), respectively, and 2 U.S.C. § 434(b), in connection with disbursements the MDP made on behalf of Senator Baucus's campaign. The Commission concluded that these disbursements almost certainly fell within the "volunteer materials" exemption, *see* 2 U.S.C. § 431(8)(B)(x) and (9)(B)(viii), and 11 C.F.R. §§ 100.7(b)(15) and 100.8(b)(16), and, thus, it was unnecessary to address whether they were (excessive) "coordinated expenditures" (in-kind contributions) that the Respondents failed to report.

I A.
The Complaint

Craig M. Engle (the "Complainant"), General Counsel of the National Republican Senatorial Committee, filed a complaint alleging that the MDP and Rhonda Whiting, as treasurer, made an excessive in-kind contribution to the Friends of Max Baucus and Randall Bishop, as treasurer, and that both committees did not properly report this transaction. The excessive in-kind contribution allegedly was a "direct mail advertising pamphlet" entitled "We Agree," which the MDP mailed to approximately 75,000 Montana addresses on Senator Baucus's behalf. This mailing compared Senator Baucus's positions on issues with those of his Republican opponent. The pamphlet was mailed on or about May 29, 1996, five days prior to the primary election.

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The Complainant alleges that under Montana law, voters were allowed to write-in the names of and vote for other individuals besides Senator Baucus in the primary election. He further alleges, based upon information and belief, that several individuals, as well as Senator Baucus, did receive write-in votes. On this basis, the Complainant argues that Senator Baucus was not the MDP's nominee at the time the pamphlets were mailed, and thus, the mailing was not covered by the "volunteer materials" exemption. In fact, the Complainant states that Senator Baucus's nomination as the Democrat nominee did not become official until August 22, 1996.

The pamphlets at issue contained a disclaimer identifying the Montana Democratic Party as the sole sponsor of the mailing, without identifying the Baucus Committee as having authorized the mailing or benefited from it. Moreover, the Complainant asserts that the pamphlets utilized pre-printed mailing labels that were produced by a high-speed commercial printer and not hand addressed by volunteers. The Complainant further alleges that the labels were pre-sorted by a mail house using a nine digit zip code.

The Montana Democratic Party's 1996 July Quarterly Report discloses, on Schedule B, the following disbursements: \$10,000 and \$10,584, made to the "November Group" on May 29, 1996 and June 12, 1996, respectively, in connection with the pamphlets; \$6,016.83 to the United States Postal Service on May 24, 1996, for postage.

According to the Complainant, during the relevant period, the "November Group" was a vendor to both the Montana Democratic Party and the Baucus Committee. The 1996 April Quarterly Report of the Baucus Committee discloses a disbursement of \$18,000 to the "November Group" for direct-mail fundraising. Additionally, the Complainant alleges that the Baucus Committee's 1996 Pre-Primary Report discloses disbursements of \$425 for "printing" and \$5,000 for "professional services" to the "November Group," but fails to disclose either the receipt of an in-kind contribution from or a coordinated expenditure with the MDP.

I B. The Response

The Baucus Committee joined in the response filed on behalf of the Montana Democratic Party. The response states that the disbursements for the pamphlets were made "pursuant to the 'volunteer materials' exemption, 2 U.S.C. § 431(8)(B)(x) and (9)(B)(viii), and 11 C.F.R. §§ 100.7(b)(15) and 100.8(b)(16), and properly reported as such." According to the MDP, all aspects of the mailing were handled by volunteers; the mailing list was owned by the MDP, not a commercial list; and the MDP paid for the mailing with federally permissible funds, none of which were donated by a national party committee. Volunteers affixed address labels, generated by the MDP's own mailing list and equipment. Volunteers also sorted, bundled, and delivered the mail to the post office. The response avers that the only role of any commercial vendor was to print and fold the brochures.

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The response includes a sworn declaration from the MDP's Executive Director that Max Baucus was unopposed in the primary election, and that it was not legally possible to write in or otherwise cast votes for any other candidate, because no other candidate had filed the required declaration of intent to become a write-in candidate by the fifteenth day prior to the election, as required by Montana law. *See Montana Code Annotated*, § 13-10-211 (1996). Thus, the response argues that in every legal and practical sense, Senator Baucus was the nominee of the Montana Democratic Party at the time the pamphlets were mailed. Further, the response contends that even if the primary had been contested, the "volunteer materials" exemption is available for disbursements made on behalf of the presumptive nominee, before the time of formal nomination, with the purpose and effect of influencing the general election. As support for this proposition, the response cites the Commission's reasoning in Advisory Opinion ("AO") 1984-15, an opinion which addressed the applicability of § 441a(d) limits to disbursements made by a national party committee prior to the general election.

II.

Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), limits to \$5,000 per election the amount which multicandidate committees may contribute to candidates and their political committees. 2 U.S.C. § 441a(a)(2). It also prohibits political committees from knowingly accepting contributions or making expenditures in violation of the statutory limits. *Id.* at § 441a(a)(f). The Act requires committees to report the contributions they make or receive. *Id.* at § 434(b).

Under the Act, a "contribution" includes "any gift, subscription, loan, advance, . . . or anything of value made by a person for the purpose of influencing any election for Federal office . . ." *Id.* at § 431(8)(A)(i). An "expenditure" is similarly defined as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." *Id.* at § 431(11). Expenditures that are coordinated with candidates or their committees are deemed (in-kind) contributions. *See id.* at § 441a(a)(7)(B)(i). ("expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committee, or their agents, shall be considered to be a contribution to such candidate . . ."); *see also Buckley v. Valeo*, 424 U.S. 1, 46 (1976).

Party committees may, however, make coordinated expenditures within the limits established by 2 U.S.C. § 441a(d) without such expenditures being deemed (in-kind) contributions (which would be subject to the \$5,000 contribution limit in § 441a(a), *supra*).¹ If a state party either exhausts its § 441a(d) (coordinated) expenditure limit, or

¹ In *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, 116 S. Ct. 2309, 2315-2316 (1996), the Supreme Court held that for party expenditures to be subject to the limits of 2

assigns this limit to a national party committee, the state party may then only make contributions to a candidate or his committee, or coordinated expenditures with a candidate or his committee, within the limit of § 441a(a).

A.

The Volunteer Materials Exemption

The Act defines both "contribution" and "expenditure" so as to exclude payments by a state committee of a political party for the costs of campaign materials, such as handbills or brochures. 2 U.S.C. § 431(8)(B)(x) and (9)(B)(viii) and 11 C.F.R. §§ 100.7(b)(15) and 100.8(b)(16). To qualify for this "volunteer materials" exemption, the payment must be "used by such committee in connection with volunteer activities on behalf of nominees of such party." *Id.* at § 431(8)(B)(x) and (9)(B)(viii). The payment must not be:

- 1) used "for the cost of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising," *id.* at § 431(8)(B)(x)(1) and (9)(B)(viii)(1);²
- 2) made from contributions that are not "subject to the limitations and prohibitions of the Act," *id.* at § 431(8)(B)(x)(2) and (9)(B)(viii)(2); and
- 3) made from contributions designated [by the donor] to be spent on behalf of a particular candidate or particular candidates," *id.* at § 431(8)(B)(x)(3) and (9)(B)(viii)(3).³

Materials purchased with funds donated by a national party committee do not qualify for this "volunteer materials" exemption. See 11 C.F.R. §§ 100.7(b)(15)(vii) and 100.8(b)(16)(vii). Furthermore, the materials must be distributed by volunteers, rather than by commercial or for-profit organizations. *Id.* at §§ 100.7(b)(15)(iv) and 100.8(b)(16)(iv).

B.

Montana Election Law

Montana requires "person[s] seeking to become a write-in candidate for an office in any election [to] file a declaration of intent." Mont. Code Ann. § 13-10-211(1) (1996). This "declaration must be filed no later than 5 p.m. on the 15th day before the election" *Id.*

U.S.C. § 441a(d), they must be *actually* coordinated with a candidate or his committee, rejecting the Commission's presumptive coordination approach for such expenditures. See 11 C.F.R. § 110.7(a)(5).

² "[T]he term *direct mail* means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists." 11 C.F.R. §§ 100.7(b)(15)(i) and 100.8(b)(16)(i) (emphasis in original).

³ "[A] contribution shall not be considered a *designated contribution* if the party committee disbursing the funds makes the final decision regarding which candidate(s) shall receive the benefit of such disbursement." 11 C.F.R. §§ 100.7(b)(15)(iii) and 100.8(b)(16)(iii) (emphasis in original).

III. Analysis

The Commission finds that the "volunteer materials" exemption applies to MDP's "We Agree" brochures. According to the Respondents, volunteers performed virtually all facets of brochure preparation and distribution. They affixed labels onto the brochures.⁴ They also sorted, bundled, and delivered the brochures to the post office. See 11 C.F.R. §§ 100.7(b)(15)(vi) and 100.8(b)(16)(iv) (materials must be distributed by volunteers, rather than by commercial or for-profit organizations). The only role of a commercial vendor was in printing and folding the brochures. This minor commercial activity does not render the brochures "direct mail" within the meaning of 11 C.F.R. §§ 100.7(b)(15)(i) and 100.8(b)(16)(i) (note two, *supra*) to which the exemption would not apply. 2 U.S.C. § 431(8)(B)(x)(1) and (9)(B)(viii)(1). See MUR 3218 (volunteer materials exemption applied where commercial vendor printed brochures, but volunteers stamped return address and bulk rate permit, sorted the pieces, and transported them to the post office); MUR 3248 (exemption applied where commercial vendor printed brochures, but volunteers wrote on or affixed address labels, sorted mail, and delivered it to post office).

Furthermore, the mailing was prepared on behalf of the MDP's presumptive nominee, Max Baucus. When the mailing occurred, Mr. Baucus was the only Democratic candidate for the United States Senate. Moreover, there could not be any other Democratic candidates for this office: while Montana allows write-in candidates, these candidates must file declarations of intent within fifteen days of the election. Mont. Code Ann. § 13-10-211(1). The "We Agree" brochure was mailed approximately five days prior to Montana's primary election, and at that time, no one had filed a declaration of intent to seek the office of United States Senator. Thus, as both a matter of fact and as a matter of state law, Mr. Baucus was the MDP's presumptive nominee.⁵ The Commission rejects the conclusion of its Office of General Counsel (OGC) that the exemption was not available to the MDP because the primary election was still a few days away. Because Mr. Baucus's nomination was a foregone conclusion, the Commission declines to elevate form over substance.

⁴ The labels were created from a MDP mailing list and were produced by MDP computers.

⁵ The mailing itself reflected the fact that the MDP viewed Mr. Baucus as its candidate for the general election and was intended to assist Mr. Baucus in the general election. The pieces contrasted Mr. Baucus's positions on issues with those of his Republican opponent.

⁶ The Commission has reached even broader holdings regarding the availability of general election spending limits prior to the actual nomination of a candidate. See Advisory Opinion 1984-15 (ruling that a party committee could make expenditures on behalf of a candidate pursuant to 2 U.S.C. § 441a(d) prior to the candidate's nomination, even though that section refers to "expenditures in connection with the general election."). Here, we need not reach so far: at the time of the mailing, Senator Baucus was the only candidate under Montana law who could receive the Democratic nomination.

Finally, the MDP almost certainly paid for the "We Agree" brochures entirely with federally permissible funds, see 2 U.S.C. § 431(8)(B)(x)(2) and (9)(B)(viii)(2), none of which were donated to it by a national committee. See 11 C.F.R. §§ 100.7(b)(15)(vii) and 100.8(b)(16)(vii). The Commission rejects as unlikely OGC's theory that the MDP may have used national party funds to pay for them. OGC's theory is based upon the fact that: a) the MDP received monies from the Democratic National Committee (DNC) around the time the MDP made payments for the brochures; and b) these monies, in the aggregate, approximate the total cost of the brochures.⁷

But a preliminary analysis of the MDP's receipts and disbursements shows that it had total receipts of approximately \$143,902.09 during the second quarter of 1996, the time when it made various payments, totaling \$27,061.53 (note seven, *supra*), for the brochures. Thus, the MDP appeared to have ample funds, even without any transfers from democratic committees, to pay the expenses associated with the brochures. It is likely the MDP had at least some of the non-transferred monies (\$143,902.09 - \$26,298.28 = \$117,713.81) on hand when it paid these expenses, unless the MDP was knowingly writing bad checks. The MDP paid for the brochures *prior* to receiving transfers that allegedly would have covered the expenses (note seven, *supra*).

Moreover, of the four transfers that OGC relies upon to support its theory, only two of them--\$15,000 from the DNC on 6/3/96 and \$4,800 from the DNC on 6/17/96 (note seven, *supra*)—involve a "covered group" for purposes of the "volunteer materials" exemption. Specifically, materials do not qualify for the exemption if they are paid with funds donated by a national party committee of a state committee. See 11 C.F.R. §§ 100.7(b)(15)(vii) and 100.8(b)(16)(vii). The other two transfers here, constituting \$6,398.28 of the allegedly "tainted" transfers, involve donations by the DSVF--a joint fundraising committee, not a national committee. As a result, these monies, even if used by the MDP to pay for the brochures, would not preclude the MDP from invoking the exemption.

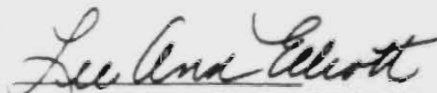
⁷ The MDP received the following funds: \$2,152.31 from the Democrat State Victory Fund (DSVF) on 5/15/96; \$15,000 from the DNC on 6/3/96; \$4,800 from the DNC on 6/17/96; and \$4,245.97 from the DSVF on 6/28/96, for a total of \$26,198.28. The MDP spent the following funds on the brochures: \$6,016.83 to the U.S. Postal Service on 5/24/96; \$10,000 to the November Group on 5/29/96; \$135.70 to Paul's Office Products on 6/11/96; \$10,584 to the November Group on 6/12/96; and \$325 to Paul's Office Products on 6/28/96, for a total of \$27,061.53. The difference between these receipts and disbursements is \$863.25. The transfers from the DSVF, however, cannot be counted as receipts for purposes of determining the applicability of the "volunteer materials" exemption because the DSVF is not a "covered group." *Infra*. The difference between relevant receipts and disbursements is thus \$7,261.53. Contrary to OGC's assertion, then, the transferred monies, in the aggregate, do not approximate the total cost of the brochures.

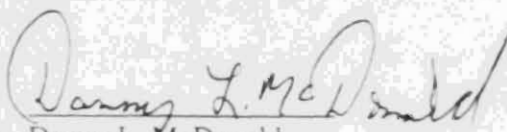
In light of these facts, the Commission believes it is most likely that the MDP paid for the brochures with qualified (non-national committee) monies. As a result, it finds it unnecessary to conduct a modified "first-in, first-out" audit of the MDP.⁸

IV. Conclusion

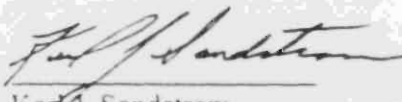
Because the Commission finds that the disbursements for the "We Agree" brochures are, by virtue of falling within the "volunteer materials exemption," not "expenditures" under the Act, we need not address whether they are excessive "coordinated expenditures." But even if the disbursements did not qualify for this exemption, the Commission would, given the nature of the activity and the relatively small amount in question (\$26,298.28), exercise its prosecutorial discretion and not pursue this matter. *Heckler v. Chaney*, 470 U.S. 821 (1985).

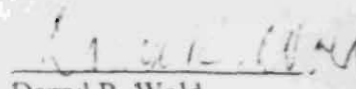

Scott Thomas
Acting Chairman


Lee Ann Elliott
Commissioner


Danny L. McDonald
Commissioner


David M. Mason
Commissioner


Karl J. Sandstrom
Commissioner


Darryl R. Wold
Commissioner

November 19, 1998

⁸ A modified FIFO analysis is the method the Commission normally uses to determine whether a state party had sufficient non-national party funds to pay for volunteer materials on those occasions when transfers from a national party committee are part of the state party's income stream.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4471

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WASHINGTON, D.C. 20463

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FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

Date: 1/28/99

✓ Microfilm

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THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 4471

99-03-391-0303



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 27, 1999

Craig M. Engle, Esq.
General Counsel
National Republican Senatorial Committee
Ronald Reagan Republican Center
425 Second Street, N.E.
Washington, DC 20002

RE: MUR 4471

Dear Mr. Engle:

Enclosed please find the documents you requested. For your records, I have also included the original transmittal letter dated November 24, 1998, that was mailed with the Statement of Reasons you did not receive. Please contact me at (202) 694-1650 if I can be of further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eugene H. Bull".

Eugene H. Bull
Attorney

Enclosures

Statement of Reasons
Comparison Chart
Letter dated November 24, 1998

99.03.391.0304