



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4562

DATE FILMED 9-28-97 CAMERA NO. 4

CAMERAMAN JMH

9704303333

The Reform Party of Montana

P.O. Box 3511
Bozeman, MT 59772-3511
(406) 587-3179

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Nov 4 10 21 AM '96

To: Mr. Lawrence Noble
General Counsel, FEC
999 E Street NW
Washington D.C. 20463

MUR 4562

From: Bob Abbott
State Chair

Re: Failure to produce objective criteria in accordance with 11CFR 110.13(e)

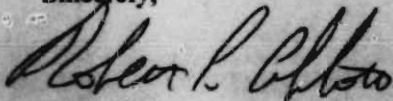
Date: 10/7/96

Attached is a letter from Mr. Wayne Schile, publisher of the Billings Gazette. This is his only response regarding exclusion of Reform Party candidate, Becky Shaw, a candidate for the US Senate seat of Max Baucus, in a debate scheduled for October 28, sponsored by the Gazette.

As state chairman of the Montana Reform Party, I have initiated two phone conversations with Mr. Schile regarding this and have made, over the past 10 days, numerous attempts to obtain a copy of his objective criteria by which he excluded my candidate. As you can see from the letter, this was his, and only his decision and was not supported by any objective criteria.

I want to initiate a formal complaint against Mr. Schile and the Gazette. Please contact me at any time if you need additional information. I can be reached at the above number and Ms. Shaw can be reached at

Sincerely,



Robert P. Abbott

Subscribed and sworn to before me on this 30th day of October 1996.

Notary: Angelia Skaraga

Residing in: Three Forks, MT

My commission expires: March 1, 2000

970435334

**Billings
Gazette**
The Source.

Wayne E. Schile, Publisher

401 N. Broadway • P.O. Box 36300 • Billings, Montana 59107-6300 • (406) 657-1200 • FAX (406) 657-1207

October 3, 1996

Becky Shaw
22 Meadow Lane
Clancy, MT 59634

Dear Ms. Shaw,

After a conversation with Bob Abbott and after reading your letter dated September 30, I gave additional thought to my decision to limit the debate to Max Baucus and Dennis Rehberg in order to cut response time by one third.

I will abide by my decision; I believe it's the right one.

Sincerely,


Wayne Schile
Publisher

WS/kp

97043835335



FEDERAL ELECTION COMMISSION

Washington, DC 20463

October 17, 1996

Robert P. Abbott
The Reform Party of Montana
PO Box 3511
Bozeman, MT 59772-3511

Dear Mr. Abbott:

This is to acknowledge receipt on October 15, 1996, of your letter dated October 7, 1996. The Federal Election Campaign Act of 1971, as amended ("the Act") and Commission Regulations require that the contents of a complaint meet certain specific requirements. One of these requirements is that a complaint be sworn to and signed in the presence of a notary public and notarized. Your letter was not properly sworn to.

In order to file a legally sufficient complaint, you must swear before a notary that the contents of your complaint are true to the best of your knowledge and the notary must represent as part of the jurat that such swearing occurred. The preferred form is "Subscribed and sworn to before me on this ____ day of ____, 19__." A statement by the notary that the complaint was sworn to and subscribed before him/her also will be sufficient. We regret the inconvenience that these requirements may cause you, but we are not statutorily empowered to proceed with the handling of a compliance action unless all the statutory requirements are fulfilled. See 2 U.S.C. § 437g.

Enclosed is a Commission brochure entitled "Filing a Complaint." I hope this material will be helpful to you should you wish to file a legally sufficient complaint with the Commission.

Please note that this matter will remain confidential for a 15 day period to allow you to correct the defects in your complaint. If the complaint is corrected and refiled within the 15 day period, the respondents will be so informed and provided a copy of the corrected complaint. The respondents will then have an additional 15 days to respond to the complaint on the merits. If the complaint is not corrected, the file will be closed and no additional notification will be provided to the respondents.

If you have any questions concerning this matter, please contact me at (202) 219-3410.

Sincerely,

Retha Dixon

Retha Dixon
Docket Chief

Enclosure

cc: *Billins Gazette*

9704335337

The Reform Party of Montana

P.O. Box 3511
Bozeman, MT 59772-3511
(406) 587-3179

Oct 15 10 08 AM '96
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

To: Mr. Lawrence Noble
General Counsel, FEC
999 E Street NW
Washington D.C. 20463

From: Bob Abbott
State Chair

Re: Failure to produce objective criteria in accordance with 11CFR 110.13(c)

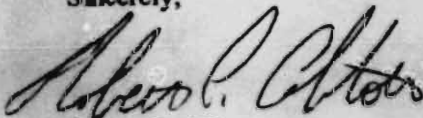
Date: 10/7/96

Attached is a letter from Mr. Wayne Schile, publisher of the Billings Gazette. This is his only response regarding inclusion of Reform Party candidate, Becky Shaw, a candidate for the US Senate seat of Max Baucus, in a debate scheduled for October 28, sponsored by the Gazette.

As state chairman of the Montana Reform Party, I have initiated two phone conversations with Mr. Schile regarding this and have made, over the past 10 days, numerous attempts to obtain a copy of his objective criteria by which he excluded my candidate. As you can see from the letter, this was his, and only his decision and was not supported by any objective criteria.

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Sincerely,


Robert P. Abbott

*Angelica Chalegl
Residing in Three Forks, MT
My commission expires March 1, 2000*

9704333333

**Billings
Gazette**
The Source.

Wayne E. Schile, Publisher

401 N. Broadway • P.O. Box 36300 • Billings, Montana 59107-6300 • (406) 657-1200 • FAX (406) 657-1207

October 3, 1996

Becky Shaw
22 Meadow Lane
Clancy, MT 59634

Dear Ms. Shaw,

After a conversation with Bob Abbott and after reading your letter dated September 30, I gave additional thought to my decision to limit the debate to Max Baucus and Dennis Rehberg in order to cut response time by one third.

I will abide by my decision; I believe it's the right one.

Sincerely,


Wayne Schile
Publisher

WS/kp

970436339



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 7, 1996

Robert P. Abbott, State Chair
The Reform Party of Montana
PO Box 3511
Bozeman, MT 59772-3511

RE: MUR 4562

Dear Mr. Abbott:

This letter acknowledges receipt on November 4, 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 4562. 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,


Colleen T. Sealander, Attorney
Central Enforcement Docket

Enclosure
Procedures

970433340



FEDERAL ELECTION COMMISSION

Washington, DC 20463

November 7, 1996

Wayne Schile, Publisher
Billings Gazette
401 N Broadway
PO Box 36300
Billings, MT 59107-6300

RE: MUR 4562

Dear Mr. Schile:

The Federal Election Commission received a complaint which indicates that the Billings Gazette and you 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 4562. 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 Billings Gazette and you 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.

970436341

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

Sincerely,

A handwritten signature in dark ink, appearing to read 'Colleen T. Seaiander', is written over a circular embossed or stamped seal.

Colleen T. Seaiander, Attorney
Central Enforcement Docket

Enclosures

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

9704335342

GARLINGTON, LOHN & ROBINSON, PLLP

STEPHEN R. BROWN
GARY B. CHUMRAU
LAWRENCE F. DALY
E. CRAIG DAUE
CANDACE C. FETSCHER
LUCY T. FRANCE
GEORGE D. GOODRICH
GARY L. GRAHAM
MAUREEN L. HALL
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TERRY J. MACDONALD

ATTORNEYS AT LAW

199 WEST PINE • P.O. Box 7909
MISSOULA, MONTANA 59807-7909
406-523-2500
TELEFAX 406-523-2595

November 25, 1996

CHARLES E. MCNEIL
JOHN O. MUDD
ANITA HARPER POE
SHANE N. REELY
LARRY E. RILEY
SUSAN P. ROY
ROBERT E. SHERIDAN
W. DENNIS STARKEL
PETER J. STOKSTAD
WILLIAM T. WAGNER
KELLY M. WILLS

R.H. "TY" ROBINSON
OF COUNSEL

DEC 3 2 26 PM '96
RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
J. GARLINGTON
1908-1995

VIA TELEFAX (202) 219-3923

Ms. Alva E. Smith
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RE: MUR 4562

Dear Ms. Smith:

Our law firm represents the Billings Gazette in the above-referenced matter, MUR 4562, involving a complaint against the Billings Gazette. Richard J. Wesnick, Editor of the Billings Gazette, received the complaint on November 11, 1996. We understand that a response is due on November 26, 1996.

Pursuant to our telephone conversation on November 25, 1996, we are writing to request additional time in which to respond to the above-referenced complaint. Wayne Schile, Publisher of the Billings Gazette, is expected to be out of state until mid-December 1996. In order to adequately address the concerns raised in the complaint, we believe it will be necessary to include an affidavit from Mr. Schile in our response. We therefore request until Monday, December 16, 1996 to respond to the complaint.

Thank you for your attention to this matter. We look forward to hearing from you.

Very truly yours,

GARLINGTON, LOHN & ROBINSON, PLLP

By

Maureen L. Hall

MLH/jdl

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4562

NAME OF COUNSEL: MAUREEN L. HALL, ESQ.

FIRM: DARLINGTON, LOHM & ROBINSON

ADDRESS: 199 WEST PINE, P.O. BOX 7909

MISSOULA, MT 59807-7909

TELEPHONE: (406) 523-2500

FAX: (406) 523-2595

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.

11/26/96
Date

Richard J. Wannick
Signature

RESPONDENT'S NAME: BILLINGS GAZETTE

ADDRESS: 401 NORTH BROADWAY

P.O. BOX 36300

BILLINGS, MT 59107-6300

TELEPHONE: HOME

BUSINESS: (406) 657-1200

NOV 26 11 38 PM '96

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 2, 1996

Maureen L. Hall, Esquire
GARLINGTON, LOHN & ROBINSON, PLLP
199 West Pine, PO Box 7909
Missoula, MT 59807-7909

RE: MUR 4562
Billings Gazette

Dear Ms. Hall:

This is in response to your letter dated November 25, 1996, which we received on November 26, 1996, requesting an extension until December 16, 1996, 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 December 16, 1996.

As discussed today, November 27, 1996, you stated that you also represent Wayne Schile, Publisher of the Billings Gazette. Your submission of a corrected Designation of Counsel form as soon as Mr. Schile returns from out of state would be most appreciated.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alva E. Smith", is written above the typed name.

Alva E. Smith, Paralegal
Central Enforcement Docket

97043345

GARLINGTON, LOHN & ROBINSON, PLLP

STEPHEN R. BROWN
GARY B. CHUMRAU
LAWRENCE F. DALY
E. CRAIG DAUE
CANDACE C. FETSCHER
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December 5, 1996

CHARLES E. MCNEIL
JOHN O. MUDD
ANITA HARPER POE
SHANE N. REELY
LARRY E. RILEY
SUSAN P. ROY
ROBERT E. SHERIDAN
W. DENNIS STARKEL
PETER J. STOKSTAD
WILLIAM T. WAGNER
KELLY M. WILLS

R.H. "BOB" ROBINSON
COUNSEL

J.C. GARLINGTON

10 08 AM '96

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

Federal Election Commission
999 E Street, NW
Washington, DC 20463
ATTN: Alva E. Smith

RE: MUR 4562

Dear Ms. Smith:

Enclosed for filing are the following:

1. Designation of Counsel for Wayne Schile;
2. Designation of Counsel for the Billings Gazette (previously telefaxed to the Commission on November 26, 1996);
3. Joint Response of the Billings Gazette and Wayne Schile to MUR 4265; and
4. Affidavit of Wayne Schile.

If you have any questions or require additional information, please let us know. Thank you for your assistance.

Very truly yours,

GARLINGTON, LOHN & ROBINSON, PLLP

Maureen L. Hall
By *Maureen L. Hall*

MLH/jdl
Enc.

GARLINGTON, LOHN & ROBINSON, PLLP

STEPHEN R. BROWN
GARY B. CHUMRAU
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KELLY M. WILLS

R.H. "TY" ROBINSON
OF COUNSEL

J.C. GARLINGTON
1908-1995

December 5, 1996

Federal Election Commission
999 E Street, NW
Washington, DC 20463
ATTN: Alva E. Smith

RE: *MUR 4265*
Response of the Billings Gazette and Wayne Schile

Dear Members of the Commission:

The following is the response of the Billings Gazette and Wayne Schile to the complaint referenced above.

Background Facts

On October 28, 1996 the Billings Gazette, a newspaper located in Billings, Montana, sponsored a public debate for candidates for the United States Senate. Early in the process of planning the debates and prior to inviting any candidates to participate, the Gazette determined that invitations would be extended to candidates who had shown the support of 5% of voters as determined in polls conducted on behalf of the Gazette and other Montana newspapers owned by Lee Enterprises. At the time invitations were extended for the debate, four U.S. Senate candidates had qualified for the Montana ballot: Max Baucus (the incumbent, Democrat Party); Steven Heaton (Natural Law Party); Dennis Rehberg (Republican Party); and Becky Shaw (Reform Party).

In the Lee Enterprises poll conducted in May, 1996, Mr. Heaton received less than 1% of the prospective vote of respondents and Ms. Shaw received 1%. In the September, 1996 less than 1% of prospective voters said they would vote for Mr. Heaton, and Ms. Shaw also received less than 1% of the prospective vote. Based upon the pre-established criteria, invitations were extended to the two candidates who received more than 5% of the prospective vote as identified in the polls: Mr. Baucus and Mr. Rehberg. In the previous polls Mr. Baucus had received 48% and 51%; Mr. Rehberg had received 39% and 37%. In a poll conducted four days before the debate, but after invitations had been extended, Mr. Heaton again received less than 1% and Ms. Shaw received 1%. In that

Federal Election Commission

RE: *MUR 4265; Response of the Billings Gazette and Wayne Schile*

December 5, 1996

Page 2

poll Mr. Baucus received 46% and Mr. Rehberg 41%. The Reform Party of Montana then filed the present complaint with the Commission claiming the Billings Gazette and Wayne Schile, the publisher of the Gazette, violated applicable regulations in selecting the candidates to participate in the debate.

Argument

The present issue is controlled by 11 CFR § 110.13 which provides in pertinent part:

(a)(2) . . . [N]ewspapers . . . may stage candidate debates in accordance with this section and 11 CFR 114.4(f)

(b) Debate Structure. The structure of debates staged in accordance with this section and 11 CFR 114.4(f) is left to the discretion of the staging organization(s), provided that:

(1) Such debates include at least two candidates; and

(2) The staging organization(s) does not structure the debates to promote or advance one candidate over another.

(c) Criteria for candidate selection. For all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate. For general election debates, staging organization(s) shall not use nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate.

In this case the pre-established, objective criterion for candidate participation was that the candidate had to receive at least 5% of the prospective vote as determined by one or more polls conducted in advance of the debate by an independent polling firm on behalf of the newspaper group of which the Billings Gazette is a part. (Affidavit of publisher Wayne Schile, attached as Exhibit A.)

The 5% criterion clearly conforms with the rule requiring objective criteria. Moreover, the objective criterion used here allowed the audience for the debate to hear from those

Federal Election Commission

RE: MUR 4265; *Response of the Billings Gazette and Wayne Schile*

December 5, 1996

Page 3

candidates whose campaign efforts to that point, just before the general election, had attracted at least measurable support among Montana voters. The 5% standard was not unreasonably high. The failure of a candidate to attract even 5% of Montana voters just one week before the election demonstrated that candidate did not have viable support among the electorate. Given the limited time available for the debate, it was reasonable and proper to allow the time to be allocated among those candidates who had shown at least measurable support among Montana voters.

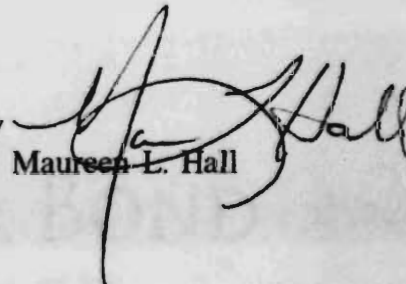
In the three polls taken before the debate, Ms. Shaw failed to show that more than 1% of prospective voters would vote for her in the general election. (Affidavit of Wayne Schile.) If her candidacy had attracted the support 5% of Montana voters, as demonstrated in the independent polls, she would have been allowed to participate. Ms. Shaw was not allowed to participate because she failed to meet the pre-established, objective criterion that was applied equally to her and to all other candidates. (Affidavit of Wayne Schile.)

The Billings Gazette fully complied with the requirements, of 11 CFR § 110.3 as the sponsoring organization for the debate. This complaint against the Billings Gazette should be dismissed.

The complaint against Mr. Schile should also be dismissed. He was not, nor is he alleged to be, the sponsor of the debate. In his role as publisher of the newspaper he merely established and implemented the criterion for candidate participation. (Affidavit of Wayne Schile.)

Very truly yours,

GARLINGTON, LOHN & ROBINSON, PLLP

By 
Maureen L. Hall

MLH/jdl
Enc.

AFFIDAVIT OF WAYNE SCHILE

STATE OF MONTANA)

: ss.

County of Yellowstone)

WAYNE SCHILE, being first duly sworn, upon his oath, deposes and says:

1. I am the publisher of the Billings Gazette, a division of Lee Enterprises, located in Billings, Montana. I made the decisions regarding candidate participation in the debate of U. S. Senate candidates sponsored by the Billings Gazette on October 28, 1996 and make this affidavit based upon my own knowledge and information.

2. The Billings Gazette decided to sponsor a debate for U.S. Senate candidates early in the campaign season. I made the decision regarding the criteria that would be used in issuing invitations to candidates to participate in the debate. The single criterion was that to participate the candidate had to have received at least 5% of the prospective votes of those surveyed in at least one of the polls conducted on behalf of the Billings Gazette and the other Lee Enterprises' newspapers in Montana. These polls are commonly referred to as "the Lee newspaper polls."

3. The Lee newspaper polls were conducted by Mason-Dixon Political/Media Research of Washington, D.C. Standard telephone interview techniques and statistical analyses are used for maximum accuracy. Prior to the general election in 1996, Mason-Dixon Research conducted polls of Montana in May, late September and late October voters to assess voter support of candidates and ballot issues.

4. The results of the poll question on the U.S. Senate race are attached to this affidavit. As indicated in these results, the percentages of Montana voters polled who supported Becky Shaw's candidacy were 1%, less than 1%, and 1% for the May, September and October polls respectively.

5. Ms. Shaw was not invited to participate in the debate of U.S. Senate candidates because she did not receive the support of at least 5% of Montana voters as shown in either the May and September polls. In the poll conducted just before the debate and only ten days before the election, she failed to receive at least 5%, so there was no change in the initial decision not to allow her to participate.

6. Ms. Shaw was not permitted to participate in the Billings Gazette's debate because she failed to meet the established criterion and for no other reason.

7. In my role as publisher of the Billings Gazette, I established and implemented the criterion used to invite candidates to participate in the debate. The sponsor of the debate was the Billings Gazette. I had no personal involvement with the debate apart from my responsibilities as an employee and publisher of the Billings Gazette.

DATED this 10 day of December, 1996.

Wayne Schile
Wayne Schile

This instrument was acknowledged before me on the 10 day of December, 1996, by Wayne Schile.

970433331
(SEAL)  Notary for the
State of Montana
Residing in Yellowstone
County My Commission
Expires May 12, 2000

Dolly Freuchs
NOTARY PUBLIC for the State of Montana
Residing at 405 S 34, Montana
My Commission Expires: May 12, 2000

MA 1996

13

QUESTION: If the 1996 election for Montana's U.S. Senate seat were held today, who would you vote for if the candidates were Max Baucus, the Democrat, Dennis Rehberg, the Republican, Becky Shaw, the New Reform candidate, and Stephen Heaton, the Natural Law Party candidate?

	<u>STATE</u>	<u>MEN</u>	<u>WOMEN</u>
BAUCUS	48%	43%	53%
REHBERG	39%	47%	31%
SHAW	1%	-	2%
HEATON	-	-	-
UNDECIDED	12%	10%	14%

QUESTION: If the 1996 election for Montana's U.S. Senate seat were held today, who would you vote for if the candidates were Max Baucus, the Democrat, Dennis Rehberg, the Republican, Webb Sullivan, the New Reform candidate, and Stephen Heaton, the Natural Law Party candidate?

	<u>STATE</u>	<u>MEN</u>	<u>WOMEN</u>
BAUCUS	49%	43%	55%
REHBERG	39%	47%	31%
SULLIVAN	-	-	-
HEATON	-	-	-
UNDECIDED	12%	10%	14%

97043835352

9/26/96

QUESTION: If the 1996 election for Montana's U.S. Senate seat were held today, would you vote for Max Baucus, the Democrat, Dennis Rehberg, the Republican, Becky Shaw of the Reform Party, or Stephen Heaton, the Natural Law Party candidate?

	<u>BAUCUS</u>	<u>REHBERG</u>	<u>UNDECIDED</u>
STATE	51%	37%	12%
<u>REGION</u>	<u>BAUCUS</u>	<u>REHBERG</u>	<u>UNDECIDED</u>
Eastern Montana	49%	39%	12%
Billings	43%	42%	15%
Great Falls	51%	39%	10%
Butte-Helena	56%	31%	13%
Missoula	52%	37%	11%
<u>SEX</u>	<u>BAUCUS</u>	<u>REHBERG</u>	<u>UNDECIDED</u>
Men	42%	44%	14%
Women	50%	30%	10%

* Others received less than 1 percent

(10)

9704335353

10/24/96

QUESTION: If the 1996 election for Montana's U.S. Senate seat were held today, would you vote for Max Baucus, the Democrat, Dennis Rehberg, the Republican, Becky Shaw or the Reform Party, or Stephen Heston, the Natural Law Party candidate?

<u>STATE</u>	<u>BAUCUS</u>	<u>REEBERG</u>	<u>SHAW</u>	<u>UNDECIDED</u>
	46%	41%	1%	12%
<u>REGION</u>	<u>BAUCUS</u>	<u>REEBERG</u>	<u>SHAW</u>	<u>UNDECIDED</u>
Eastern Montana	44%	39%	-	17%
Billings	47%	38%	1%	14%
Great Falls	43%	47%	1%	9%
Butte-Helena	48%	38%	1%	13%
Missoula	46%	43%	1%	10%
<u>SEX</u>	<u>BAUCUS</u>	<u>REEBERG</u>	<u>SHAW</u>	<u>UNDECIDED</u>
Men	42%	44%	1%	13%
Women	50%	38%	1%	11%

* Heston received less than 1 percent

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4562

NAME OF COUNSEL: MAUREEN L. HALL, ESQ.

FIRM: GARLINGTON, LOHN & ROBINSON

ADDRESS: 199 WEST PINE, P.O. BOX 7909

MISSOULA, MT 59807-7909

TELEPHONE: (406) 523-2500

FAX: (406) 523-2595

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

12/10/96
Date

Wayne Schile
Signature

RESPONDENT'S NAME: WAYNE SCHILE

ADDRESS: 401 NORTH BROADWAY

P.O. BOX 36300

BILLINGS, MT 59107-6300

TELEPHONE: HOME()

BUSINESS(406) 657-1200

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4562

NAME OF COUNSEL: MAUREEN L. HALL, ESQ.

FIRM: GARLINGTON, LOHN & ROBINSON

ADDRESS: 199 WEST PINE, P.O. BOX 7909

MISSOULA, .MT 59807-7909

TELEPHONE: (406) 523-2500

FAX: (406) 523-2595

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

12/6/96
Date

Richard J. Wasmuth
Signature

RESPONDENT'S NAME: BILLINGS GAZETTE

ADDRESS: 401 NORTH BROADWAY

P.O. BOX 36300

BILLINGS, MT 59107-6300

TELEPHONE: HOME()

BUSINESS(406) 657-1200

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The Reform Party of Montana

P.O. Box 3511

Bozeman, MT 59772-3511

(406) 585-8550

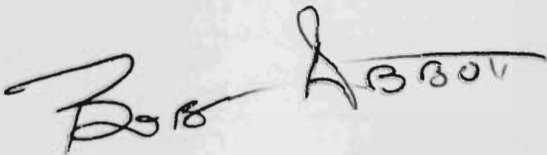
To: Colleen T. Sealander
From: Bob Abbott
State Chair
Re: MUR 4562
Date: 01/02/97

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JAN 15 12 59 PM '97

Please update the status of the above complaint at your earliest convenience.

Thank you,

 Bob Abbott

9704035357



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 22, 1997

Robert Abbott
The Reform Party of Montana
PO Box 3511
Bozeman, MT 59772-3511

RE: MUR 4562

Dear Mr. Abbott:

This is in response to your letter dated January 2, 1997, which we received on January 15, 1997, in which you requested information pertaining to the complaint you filed on November 4, 1996, with the Federal Election Committee.

The Federal Election Campaign Act of 1971, as amended ("Act") prohibits any person from making public the fact of any notification or investigation by the Commission, prior to closing the file in the matter, unless the party being investigated has agreed in writing that the matter be made public. See 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A). Because there has been no written agreement that the matter be made public, we are not in a position to release any information at this time.

As you were informed by letter dated November 7, 1996, we will notify you as soon as the Commission takes final action on your complaint.

Sincerely,

Alva E. Smith, Paralegal
Central Enforcement Docket

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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)
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ENFORCEMENT PRIORITY

SENSITIVE

AUG 19 1997

**EXECUTIVE SESSION
SUBMITTED LATE**

GENERAL COUNSEL'S REPORT

I. INTRODUCTION.

The cases listed below have been identified as either stale or of low priority based upon evaluation under the Enforcement Priority System (EPS). This report is submitted to recommend that the Commission no longer pursue these cases.

II. CASES RECOMMENDED FOR CLOSURE.

A. Cases Not Warranting Further Action Relative to Other Cases Pending Before the Commission

EPS was created to identify pending cases which, due to the length of their pendency in inactive status or the lower priority of the issues raised in the matters relative to others presently pending before the Commission, do not warrant further expenditure of resources. Central Enforcement Docket (CED) evaluates each incoming matter using Commission-approved criteria which results in a numerical rating of each case.

Closing such cases permits the Commission to focus its limited resources on more important cases presently pending before it. Based upon this review, we have identified 34 cases which do not warrant further action relative to other pending matters.¹

¹ These cases are: MUR 4470 (*Ward for Congress*); MUR 4478 (*Citizens for Tom Reynolds*); MUR 4492 (*Friends of Ken Poston*); MUR 4498 (*Darryl Roberts for Congress*); MUR 4506 (*The Hon. Ted Little*); MUR 4512 (*Friends of Lane Evans*); MUR 4517 (*Unknown Respondent*); MUR 4518 (*Kansans for Rathbun*); MUR 4520 (*Larry Lerner for*

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Attachment 1 to this report contains summaries of each case, the EPS rating, and the factors leading to assignment of a low priority and recommendation not to further pursue the matter.

B. Stale Cases

Effective enforcement relies upon the timely pursuit of complaints and referrals to ensure compliance with the law. Investigations concerning activity more distant in time usually require a greater commitment of resources, primarily due to the fact that the evidence of such activity becomes more remote and consequently more difficult to develop. Focusing investigative efforts on more recent and more significant activity also has a more positive effect on the electoral process and the regulated community. In recognition of these facts, EPS also provides us with the means to identify those cases which, though earning a higher rating when received, remained unassigned due to a lack of resources for effective investigation. The utility of commencing an investigation declines as these cases age, until they reach a point when activation of a case would not be an efficient use of the Commission's resources.

Congress); MUR 4522 (*Republican Party of Bexar County*); MUR 4523 (*Cong. Andrea Seastrand*); MUR 4524 (*Danny Covington Campaign Fund Committee*); MUR 4526 (*Hoeffell for Congress*); MUR 4528 (*Pete King for Congress*); MUR 4529 (*Pete King for Congress*); MUR 4532 (*Citizen's Committee for Gilman for Congress*); MUR 4535 (*Visclosky for Congress*); MUR 4537 (*Di Nicola for Congress*); MUR 4541 (*Ross Perot*); MUR 4548 (*Blagojevich for Congress*); MUR 4550 (*Friends of Wamp for Congress*); MUR 4551 (*John N. Hostettler*); MUR 4557 (*De La Rosa for Congress*); MUR 4559 (*Bill Baker for Congress*); MUR 4560 (*George Stuart Jr. for Congress*); MUR 4562 (*Wayne E. Schile*); MUR 4566 (*Al Gore*); MUR 4574 (*Danny Covington Campaign Fund Committee*); MUR 4576 (*Volunteers for Shimkus*); MUR 4579 (*New Zion Baptist Church*); MUR 4580 (*Friends of Mike Forbes*); MUR 4584 (*Bill Baker for Congress*); MUR 4588 (*Navarro for Congress*); and MUR 4613 (*Guy Kelley for Congress*).

The U.S. District Court for the District of Columbia, however, held in *Democratic Senatorial Campaign Committee v. FEC*, Civil Action No. 95-0349 (D.D.C. April 17, 1996) that 24 months was too long a time in which to hold a case in an inactive status.

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Twenty one cases have remained on the Central Enforcement Docket for a sufficient period of time to render them stale, all of which are recommended for closure in this Report.⁴ This group includes four MURs that became stale several months ago, but were held pending criminal prosecution by the Department of Justice.⁵ DOJ obtained convictions in the two criminal cases related to these four MURs (*U.S. v. Jay Kim* and *U.S. v. Dynamic Energy Resources*) based upon guilty pleas by the key defendants, who are also the principal respondents in our pending matters. Pursuit of civil enforcement action in view of the satisfactory results obtained in the criminal cases would not be the most effective use of the Commission's scarce resources at this time.

We recommend that the Commission exercise its prosecutorial discretion and direct closure of the cases listed below, effective August 29, 1997. Closing these cases as

⁴ These cases are: MUR 4274 (GOPAC); MUR 4358 (Miller for Senate); MUR 4361 (ABC-TV); MUR 4368 (Citizens Business Bank); MUR 4380 (AFGE Local 2391 PAC); MUR 4385 (Dial for Congress); MUR 4386 (Zimmer for Senate); MUR 4396 (ABC); MUR 4404 (Friends of Steve Stockman); MUR 4410 (39th Legislative District); MUR 4417 (Our Choice II); MUR 4422 (Desana for Congress Committee); and Pre-MUR 336 (Park National Bank & Trust).

⁵ These cases are: MUR 3796 (Jay Kim for Congress); MUR 3798 (Jay Kim); MUR 4275 (Jay Kim); and MUR 4356 (Dynamic Energy Resources). In dismissing the Jay Kim cases, we also recommend closing Pre-MUR 352, which is the transmittal of the guilty plea agreement and related documentation in the criminal case against Congressman Kim forwarded by United States Attorney's office.

of this date will permit CED and the Legal Review Team the necessary time to prepare closing letters and case files for the public record.

III. RECOMMENDATIONS.

A. Decline to open a MUR, close the file effective August 29, 1997, and approve the appropriate letters in the following matters:

Pre-MUR 336

Pre-MUR 352

B. Take no action, close the file effective August 29, 1997, and approve the appropriate letters in the following matters:

MUR 3796	MUR 4396	MUR 4522	MUR 4559
MUR 3798	MUR 4404	MUR 4523	MUR 4560
MUR 4274	MUR 4410	MUR 4524	MUR 4562
MUR 4275	MUR 4417	MUR 4526	MUR 4566
	MUR 4422	MUR 4528	MUR 4574
MUR 4356	MUR 4470	MUR 4529	MUR 4576
MUR 4358	MUR 4478	MUR 4532	MUR 4579
MUR 4361	MUR 4492	MUR 4535	MUR 4580
MUR 4368	MUR 4498	MUR 4537	MUR 4584
	MUR 4506	MUR 4541	MUR 4588
MUR 4380	MUR 4512	MUR 4548	MUR 4613
MUR 4385	MUR 4517	MUR 4550	
MUR 4386	MUR 4518	MUR 4551	
	MUR 4520	MUR 4557	

8/14/97

Date

Attachment:

Case Summaries

Lawrence M. Noble (7/2)

Lawrence M. Noble
General Counsel

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CERTIFICATION

A. Decline to open a MUR, close the file effective August 29, 1997, and approve the appropriate letters in the following matters:

- B. Take no action, close the file effective August 29, 1997, and approve the appropriate letters in the following matters:

- (continued)

Federal Election Commission
Certification: Enforcement Priority
August 19, 1997

Page 2

19. MUR 4492.	20. MUR 4498.	21. MUR 4506.
22. MUR 4512.	23. MUR 4517.	24. MUR 4518.
25. MUR 4520.	26. MUR 4522.	27. MUR 4523.
28. MUR 4524.	29. MUR 4526.	30. MUR 4528
31. MUR 4529.	32. MUR 4532.	33. MUR 4535.
34. MUR 4537.	35. MUR 4541.	36. MUR 4548
37. MUR 4550.	38. MUR 4551.	39. MUR 4557.
40. MUR 4559.	41. MUR 4560.	42. MUR 4562.
43. MUR 4566.	44. MUR 4574.	45. MUR 4576.
46. MUR 4579.	47. MUR 4580.	48. MUR 4584.
49. MUR 4588.	50. MUR 4613.	

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

Attest:

8-21-97
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 29, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert P. Abbott, State Chair
The Reform Party of Montana
PO Box 3511
Bozeman, MT 59772-3511

RE: MUR 4562

Dear Mr. Abbott:

On November 4, 1996, the Federal Election Commission received your complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the respondents. See attached narrative. Accordingly, the Commission closed its file in this matter on August 29, 1997. This matter will become part of the public record within 30 days.

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

Sincerely,


F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Attachment
Narrative

9704335365

MUR 4562

WAYNE E. SCHILE

Bob Abbot, Chairman of the Reform Party of Montana, alleges that Wayne Schile, publisher of the Billings Gazette, wrongfully excluded Reform Party Senate candidate Becky Shaw from a debate sponsored by the Gazette.

In response to the complaint, the respondents state that Ms. Shaw was properly excluded from the debate in accordance with objective criteria established by the newspaper for participation. Under this criteria, according to respondents, debate participants were identified as those who received more than 5% of the "prospective vote" as identified in polls conducted on behalf of the Gazette and other Montana newspapers. Respondents assert that Ms. Shaw would have received 1% of the prospective vote, according to their polls.

There is no indication of any serious intent to violate the FECA. This matter is less significant than others presently pending before the Commission.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 29, 1997

Maureen L. Hall, Esquire
GARLINGTON, LOHN & ROBINSON
199 West Pine, P.O. Box 7909
Missoula, MT 59807-7909

RE: MUR 4562
Billings Gazette and Wayne Schile, Publisher

Dear Ms. Hall:

On November 7, 1996, the Federal Election Commission notified your clients of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against your clients. See attached narrative. Accordingly, the Commission closed its file in this matter on August 29, 1997.

The confidentiality provisions of 2 U.S.C. § 437g(a)(2) 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 219-3400.

Sincerely,


F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Attachment
Narrative

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MUR 4562

WAYNE E. SCHILE

Bob Abbot, Chairman of the Reform Party of Montana, alleges that Wayne Schile, publisher of the Billings Gazette, wrongfully excluded Reform Party Senate candidate Becky Shaw from a debate sponsored by the Gazette.

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There is no indication of any serious intent to violate the FECA. This matter is less significant than others presently pending before the Commission.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4562

DATE FILMED 9-23-97 CAMERA NO. 4

CAMERAMAN JMU

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