



FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *WCS*

DATE: March 11, 1999

SUBJECT: MUR 4759-First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

SENSITIVE ☒
NON-SENSITIVE ☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

DISTRIBUTION

COMPLIANCE ☒

Open/Closed Letters ☐

MUR ☐

DSP ☐

STATUS SHEETS ☐

Enforcement ☐

Litigation ☐

PFESP ☐

RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐

FEDERAL ELECTION COMMISSION
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Washington, D.C. 20463

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MAR 11 4 50 PM '99

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 4759
DATE COMPLAINT FILED: 6/18/98
DATE OF NOTIFICATION: 6/22/98
DATE ACTIVATED: 9/10/98

STAFF MEMBER: J. Michael Lehmann

COMPLAINANTS: Republican Party of New Mexico
John Dendahl, Chairman

RESPONDENTS: Friends of Phil Maloof and Dolores Gonzáles, as treasurer
Supporters of Phil Maloof, and Theresa Keaveny, as treasurer
Phillip J. Maloof

RELEVANT STATUTES: 2 U.S.C. § 431(2)(A)
2 U.S.C. § 432(e)(1)
2 U.S.C. § 433(b)(2)
2 U.S.C. § 434(a)(2)(B)
2 U.S.C. § 441d(a)
11 C.F.R. § 110.1(a)
11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter arises from a complaint filed with the Federal Election Commission (hereinafter the "Commission") on June 18, 1998. Complainant, Republican Party of New Mexico, alleges various disclosure violations – 2 U.S.C. §§ 432(e)(1), 433(b)(2), 434(a)(2)(B), 441d(a) – against Phil Maloof and his two principal campaign committees, Friends of Phil

Maloof and Supporters of Phil Maloof.¹ Respondents were notified of the complaint on June 22, 1998, and responded to it on August 10, 1998.

II. FACTUAL AND LEGAL ANALYSIS

A. Law

The Federal Election Campaign Act (the "Act") defines a "candidate" as an individual seeking either nomination for election or election to Federal office "if such individual has received contributions aggregating in excess of \$5,000 or has made expenditures aggregating in excess of \$5,000;" 2 U.S.C § 431(2)(A). "Payments made solely for the purpose of determining whether an individual should become a candidate are not expenditures." 11 C.F.R. § 100.8(b)(1)(i). *See also* 11 C.F.R. § 100.7(b)(1)(i) (contributions). "The individual shall keep records of the name of each contributor, the date of receipt and amount of all contributions received (see 11 CFR 102.9(a)), and all expenditures made (see 11 CFR 102.9(b)) in connection with activities conducted under 11 CFR 100.7(b)(1) and 11 CFR 100.8(b)(1) or the individual's campaign prior to becoming a candidate." 11 C.F.R. § 101.3.

The Commission has emphasized the narrow scope of this exemption to the Act's disclosure requirements. *See, e.g.,* Explanation and Justification for Regulations on Payments Received for Testing the Waters Activities, 50 C.F.R. 9992, 9993 (1985) ("The Commission has, therefore, amended the rules to ensure that the 'testing the waters' exemptions will not be extended beyond their original purpose. Specifically, these provisions are intended to be limited exemptions from the reporting requirements of the Act . . ."). Expenditures are excluded from

¹ During the relevant period, Maloof was a candidate for two elections – his party's nomination for a seat in the House of Representatives and a special election to fill a vacancy in that seat – and chose to maintain separate principal campaign committees for these elections.

the testing the waters exemption where “[t]he individual conducts activities in close proximity to the election or over a protracted period of time.” 11 C.F.R. § 100.8(b)(1)(ii)(D).

A candidate is required to designate a principal campaign committee “no later than 15 days after becoming a candidate.” 2 U.S.C. § 432(e)(1). *See also* 11 C.F.R. § 110.1(a) (“A candidate shall designate his or her principal campaign committee by filing a Statement of Candidacy on FEC Form 2, or by filing a letter containing the same information”) “Each authorized campaign committee shall file a statement of organization no later than 10 days after designation pursuant to section 432(e)(1).” 2 U.S.C. § 433(a). “The statement of organization of a political committee shall include . . . the name, address, relationship, and type of any connected organization or affiliated committee.” 2 U.S.C. § 433(b)(1). The treasurer of each political committee must regularly file disclosure reports with the Commission. *See, e.g.*, 2 U.S.C. § 434(a)(2)(B) (biannual reports from Congressional committees in non-election years).

All expenditures expressly advocating the election or defeat of a clearly identified candidate or soliciting contributions must clearly identify who has paid for the communication and whether the communication was authorized by a candidate or authorized political committee. 2 U.S.C. § 441d(a).

B. Facts

1. Congressman Steve Schiff's Decision Not to Seek Reelection

Congressman Steve Schiff (R-NM) spent most of 1997 undergoing treatment for skin cancer, and, accordingly, was absent from Congress most of the year. *See, e.g., Few Jumping for Schiff's Seat*, ALBUQUERQUE JOURNAL, Jan. 13, 1998 (Response, Attachment #1.) Despite the serious nature of his illness, as late as January 1998, Schiff indicated that he intended to seek reelection. *Id.* On January 30, 1998, Congressman Schiff announced that he would not seek re-

election. By February 10, Schiff had endorsed Republican Heather Wilson. Schiff died on March 25. As a result, a special election for the vacant seat in New Mexico's First Congressional District was scheduled for June 23, three weeks after the June 2 primary election.

2. State Senator Phil Maloof's Congressional Candidacy

In 1993, Phil Maloof was appointed to a seat in the New Mexico state senate, was reelected in 1996, and will be up for reelection in 2000. By late 1997, Maloof either had decided to seek election to the House of Representatives or was contemplating such a campaign.

According to disclosure reports, his committee spent the following amounts: (1) \$10,285.60 by September 30, 1997; (2) \$34,739.53 by November 30; and (3) \$38,501.09 by December 31.

More specifically, in addition to September expenditures of \$9,915.00 and November expenditures of \$24,446.00 for consultant's fees, the report indicates a December 18 expenditure of \$2,400 for a "phone deposit" and a December 29 expenditure of \$4,500 for "rent."

On January 14, Maloof formally announced his candidacy for the Congressional seat in New Mexico's First Congressional District. On February 11 – the day after he was required to file his declaration of candidacy with the New Mexico Secretary of State's office, *see* N.M. Stat. § 1-28-26A – Maloof filed a Statement of Candidacy (hereinafter "Form 2") with the Commission indicating that he would be a candidate for the Congressional seat, and identifying his principal campaign committee as Friends of Phil Maloof. Friends of Phil Maloof filed its Statement of Organization ("Form 1") on February 10.² On April 19, Friends of Maloof filed its first disclosure report, the April 15 Quarterly Report, with the Commission.

² Though both Maloof's Statement of Candidacy and Friends of Maloof's Statement of Organization were dated February 9, they were apparently received at different times.

On April 24, Maloof filed his Form 2 for the special election and designated Supporters of Phil Maloof as his principal campaign committee. Supporters of Phil Maloof filed its Form 1 the same day. On April 24, Maloof was selected as the Democratic candidate for the special election. *See Maloof is Dems Pick for Schiff Seat*, ALBUQUERQUE JOURNAL, April 26, 1998 (Attachment 1, p. 1-2.) On June 2, Phil Maloof won the Democratic primary for the November 3 election. On June 9, Supporters of Phil Maloof filed its first disclosure report, the 12-Day Pre-Election Report, with the Commission. On June 23, Republican candidate Heather A. Wilson won the special election.

C. Complaint and Responses

1. Disclaimer Violations

The complaint alleges that "Maloof's campaign committees"³ violated Section 441d(a) by failing to include the necessary disclaimers for several of its communications which expressly advocated Maloof's election. First, complainant alleges that in May 1998, "the Maloof committees" mailed 110,000 absentee ballot requests, along with advocacy pieces which failed to identify the source of the mailings.⁴ Second, during the course of the elections, "numerous" four-by-eight foot outdoor signs advocating Maloof's election – without the requisite disclaimers – were posted at various locations around the district. Third, invitations for a June 17, 1998 fundraiser (i.e., shortly before the special election and shortly after Maloof's victory in the primary

³ Throughout the complaint, complainant refers to "the Maloof committees" or "the Maloof campaign," failing to identify which committee allegedly violated the Act.

⁴ A newspaper account attached to the complaint indicates that "Maloof mailed out about 100,000 forms for absentee ballots in the 1st District, . . ." *Maloof Application Processing Halted*, ALBUQUERQUE JOURNAL, Jan. 13, 1998 (Complaint, Attachment #4). Complainant submits no other document that would indicate how many direct mail pieces/absentee ballots were sent out.

assured him a place on the November ballot) failed to indicate who paid for their printing and mailing.⁵

Respondents do not deny their failure to include the required disclaimer on the mailers, fundraising invitations and billboards, but provide what they believe to be mitigating factors regarding the three items. They point out that most of the relevant material sponsored by the Maloof campaign contained the necessary disclaimers, and further argue that "there never was any doubt to the reader as to the sponsor of the communications" and that "[e]ach of the items displayed the Maloof campaign's distinctive logo and, in two of the three cases, the campaign's slogan: 'A New Generation of Leadership.'" (Response, p. 2.)

2. Failure to File a Statement of Candidacy

Complainant also argues that Maloof violated Section 432(e)(1) by pointing out that the Maloof campaign made expenditures in excess of \$5,000 as early as September 2, 1997, yet did not file a Form 2 until February 11, 1998. Complainant argues the expenditures at issue – i.e., those prior to January 27, 1998 – cannot constitute testing the waters because of both the size and nature of the expenditures. The disclosure report filed by Friends of Maloof indicates a September 2, 1997 expenditure of \$9,915.00 for a "consultant," a November 24, 1997 expenditures of \$3,830.00 to another consultant and \$20,616.00 to a third vendor for a survey. Lastly, the report indicates a December 18, 1997 expenditure of \$2,400 for a "phone deposit" and a December 29, 1997 expenditure of \$4,500 for "rent." Presuming that Maloof was a candidate

⁵ Complainant also alleges that respondents violated 47 C.F.R. § 73.1212(d) by placing disclaimers in the middle of campaign commercials, rather than the beginning or end. As the Commission's enforcement jurisdiction is limited to violations of FECA; see 2 U.S.C. §§ 437c(b)(1), 437g(2), 437g(4)(A)(I); this Report does not address that allegation.

when complainant alleges, Friends of Maloof also violated 2 U.S.C. § 434(a)(2)(B)(ii) by failing to file a report in January 1998 for campaign activities in the second half of 1997.

Respondents state that Maloof made "exploratory expenditures" and that, accordingly, he was not required to register pursuant to 11 C.F.R. §§ 100.8(b)(1)(i) and 100.7(b)(1)(i). They point out that though Congressman Schiff was being treated for skin cancer and had not been present in Congress for many months, he had publicly stated that he would seek reelection in 1998. According to respondents, Maloof was considering running for the seat and, "decided to make some exploratory expenditures to determine the vulnerability of the incumbent and to determine his own support in the district." (Response, p. 2.) Respondents note that the largest expenditures were for polling and survey research, which they term "traditional exploratory activity." They also argue that the other expenditures, such as rent and telephones, constitute appropriate testing the waters expenses under Commission guidelines, citing Advisory Opinion ("AO") 1985-40.

3. Failure to Indicate Affiliation

Lastly, complainants allege that both committees violated Section 443(b)(2) by failing to identify the other, on its Form 1, as an "affiliated organization." Both committees filled in question 6 by indicating "not applicable." (Complaint, Attachment 8.) On his Statement of Candidacy for the general election, Maloof left question 7 blank. (Complaint, Attachment 6, p. 1.) On his Form 2, Maloof filled in question 7 as "not applicable." (Complaint, Attachment 6, p. 2.) Respondents point to the fact that the committees were formed for distinct elections, with separate contribution limits, and argue that the two committees are, therefore, not "affiliated."

D. Analysis

1. Disclaimer Violations

The Maloof committees do not dispute that the mailers, fundraising invitations and outdoor advertising lacked a disclaimer, but provide what they consider to be mitigating factors. *See supra* p. 6. To the extent that respondents argue that they sufficiently complied with 441d(a) or that the statute allows for some sort of a "disclaimer by inference," this argument has previously been tested and rejected. *See e.g., FEC v. National Conservative Political Action Committee*, No. 85-2898 (D.D.C. April 29, 1987) (unpublished opinion) ("the Act and regulations do not provide for disclaimers by inference and the court is consequently of the view that these repeated references to NCPAC which appear within the materials do not satisfy section 441d's disclaimer requirement").

With two separate committees making expenditures for two elections three weeks apart, it is not clear which committee paid for the mailings, outdoor signs and fund-raiser invitations. Specifically, the mailer mentions both elections and, apparently, the application to vote absentee was applicable to both elections (Complaint, Attachment 2), the billboard merely says "Phil Maloof for Congress Democrat" (Complaint, Attachment 3), and the invitation merely refers to "Phil Maloof, candidate for Congress." After reviewing the disclosure reports from both Friends of Phil Maloof and Supporters of Phil Maloof it is not clear which committee is responsible for which expenditure; in fact, it appears that the committees may have shared expenditures. Accordingly, as to the disclaimer violations, this Office recommends findings against both Friends of Maloof and Supporters of Maloof.

2. Failure to File a Statement of Candidacy and 1997 Disclosure Report

Given his January 14, 1998 public announcement of his candidacy, Maloof's Form 2 – filed February 11, 1998 – was untimely regardless of whether his previous expenditures constituted testing the waters. *See* 2 U.S.C. § 432(e)(1), 11 C.F.R. § 110.1(a). The relevant issue is how untimely Maloof's Form 2 was, and whether his failure to file a timely Form 2 also resulted in a failure by his principal campaign committee to file a report for the second half of 1997. If Maloof became a candidate by early December, such that his committee's Form 1 was due before the end of 1997, Friends of Maloof violated Section 434(a)(2)(B)(ii).⁶

As respondents note, neither the size (roughly \$35,000) nor the nature (mostly consultant's fees and surveys) of the expenditures prior to December 6, 1997 compel the conclusion that Maloof was a candidate at that point. On the other hand, in deciding whether activities fit within the narrow scope of the testing the waters exemption to the Act's disclosure requirements, the Commission determines whether a person has actually decided to seek Federal office. *See* Explanation and Justification for Regulations on Payments Received for Testing the Waters Activities, 50 C.F.R. 9992, 9993 (1985) ("The revised rules . . . have been amended to further clarify that the 'testing the waters exemptions' do not apply to campaign activities undertaken once an individual has decided to become a candidate."). *Cf.* MUR 2069 (Siegelman) (following investigation, NFA where available evidence failed to indicate that respondent had, in fact, decided to become a candidate).

⁶ The Commission has taken the position that a principal campaign committee need only file a periodic report with the Commission after the committee's Form 1 has already become due. *See* FED. ELEC. COMM. ANN. REP. 1997 (LEGIS. RECOMMENDATIONS), p. 43 ("This schedule [2 U.S.C. §§ 432(e) and 433(a)] allows 25 days to pass before the committee's reporting requirements are triggered. Consequently, the financial activity that occurred prior to the registration is not disclosed until the committee's next upcoming report. . . . For example, should a report be due 20 days after an individual becomes a candidate, the unregistered committee would not have to file a report on that date and disclosure would be delayed. The next report might not be filed for 3 more months.")

While a review of the available information supports an inference that Maloof did engage in testing the waters, that period (and his decision to become a candidate for the office) apparently occurred much earlier than respondents indicate. As early as July 1997, it was reported that Maloof was exploring the possibility of running against Schiff. Specifically, the Associated Press reported as follows:

Democratic state Sen. Phil Maloof said he's considering running for the 1st Congressional District seat held by Republican Rep. Steve Schiff.

"Right now, I'm just talking to key people in the district," said Maloof, whose family has built a vast fortune through banking interests, a beer distributorship, casinos in Nevada and Colorado and professional sports teams.

"A lot of people have come to me asking me to explore the opportunity to run," Maloof said. "I'm actively looking at it now."

. . .

While Maloof is contemplating seeking a seat in Congress, there is a petition drive within his legislative district which urges him to serve out the remainder of his term.

Member of Prominent Family May Seek Seat in Congress, THE ASSOCIATED PRESS POLITICAL SERVICE, July 18, 1997. (Attachment 1, p. 3.) By October 1997 – when Maloof says, or least implies, that he *began* – testing the waters, he was quoted as saying that he was “about 75 percent” certain of his candidacy. *See A Long Absence*, ALBUQUERQUE JOURNAL, Oct. 7, 1997 (“One probable Democratic contender for Schiff’s seat next year is state Sen. Phillip Maloof. But Maloof, who said he is ‘about 75 percent’ certain he will run, declined comment on whether Schiff’s illness has affected Albuquerque.”) (Attachment 1, p. 6.)

Though Maloof cites a reluctance to run against an incumbent as the reason why he says he did not decide to become a candidate until less than five months before the election, Schiff was presumed to be a candidate for reelection at the time Maloof announced his candidacy. *See*,

Phil Maloof Seeks Schiff's Seat, ALBUQUERQUE JOURNAL, Jan. 15, 1998 ("Maloof made no mention of Schiff in his announcement [¶] However, state Democratic Party chairman Ray Sena said Maloof's big challenge will be overcoming Schiff's popularity.") (Response, Attachment #2); *Albuquerque Businessman Announces Congressional Bid*, ASSOCIATED PRESS POLITICAL SERVICE, Jan. 24, 1998 ("Maloof announced his candidacy earlier this month. [¶] Schiff, who was first elected in 1988, is seeking re-election to a sixth term.") (Attachment 1, p. 10). Having spent approximately \$35,000 on consultants' fees, it is difficult to believe that two months before the filing deadline Maloof, who was not up for election in that election cycle, had not yet decided to seek the Congressional seat for a district which presumably overlapped a great deal with his state senate district. Further, to the extent that Maloof had made a "conditional" or "qualified" decision to become a candidate, the Commission has previously found that such "conditional candidates" are candidates within the meaning of Section 431(2). *See e.g.*, MUR 2615 (Wieder) (decision to seek House seat, allegedly contingent only upon incumbent's decision not to run, not testing the waters); MUR 2262 (Robertson) (decision to seek Presidency allegedly contingent on receiving contributions from certain number of persons not testing the waters).⁷ Accordingly, this Office recommends that the Commission find reason to believe that Maloof may have violated 2 U.S.C. § 432(e)(1) and that Friends of Phil Maloof and Dolores Gonzáles, as treasurer, may have violated 2 U.S.C. § 434(a)(2)(B).

⁷ As for the advisory opinion cited by respondents, AO 1985-40 does not support the conclusion that Maloof was testing the waters until his January 14, 1998 public announcement of his candidacy. As most of that opinion discusses whether particular activities by a multicandidate political committee constitute in-kind contributions – not whether a prospective candidate has crossed the line into a "candidacy" under 2 U.S.C. § 431(2)(A) – it is not clear why respondents cite 1985-40. Further, AO 1985-40 involved a possible Presidential (i.e., national) candidacy and the request for an opinion was received over two years before the first primary. Indeed, a majority of the advisory opinions approving certain expenditures and contributions as constituting testing the waters involve possible Presidential campaigns – where the need to determine the relative strength of a potential

3. Failure to Register as Affiliated Committees

Complainants cite no authority to support their assertion that "under federal law, principal campaign committees are always affiliated." Commission regulations specifically state that "[a]ll authorized committees of the same candidate *for the same election to Federal office* are affiliated." 11 C.F.R. § 100.5(g)(1) (emphasis supplied). Cf. AO 1983-31 (as special and general elections are separate elections – even if held on same day – separate spending limits apply). This Office recommends finding no reason to believe that Friends of Maloof or Supporters of Maloof violated 2 U.S.C. § 433(b)(1) by failing to identify each other on their statement of organization as "affiliated committees."

4. Further Proceeding

The majority of the response is directed towards the issue of whether the Commission should exercise its prosecutorial discretion to decline to pursue an enforcement action in the present matter. To the extent that the Commission considers these "mitigating factors," it should do so within the context of conciliation. Even in cases involving solely 441d(a) violations, the Commission has previously pursued enforcement matters, including violations by a candidate's principal campaign committee where it was doubtful that the public was confused as to the origin of the advertisements. *See, e.g.*, MUR 4416 (Hamilton for Congress) (shopping bags with "Lee Hamilton for Congress" printed on them, solicitations instructing recipients to send contributions to the committee's address); MUR 3960 (Whitfield for Congress) (solicitations for "Congressional Campaign Kick-off of Ed Whitfield").⁸

candidate to run a national race is fairly obvious – and activities conducted well before the election. *See e.g.*, AO 1983-9, AO 1982-19, AO 1982-3, AO 1981-32.

⁸ Regarding the possibility of public confusion resulting from the failure to include the requisite disclaimer, it is also worth noting that in a recently activated matter – MUR 4828 (Baron Hill for Congress) – involving tote

Further, respondents' proffered mitigating factors are unconvincing. It could be argued that both Maloof and Wilson – the Democratic and Republican candidates, respectively, in the special election that occurred just three weeks after the primary election – benefited from what was, in effect, a double contribution limit for what was effectively one campaign. *See, e.g., Heather Wilson, Phil Maloof on top in Pre-election Polls*, ASSOCIATED PRESS POLITICAL SERVICE, May 31, 1998 (“Republican Heather Wilson and Democrat Phil Maloof, *apparently benefiting from advertising for a special election later this month*, were the solid leaders in polls conducted for their 1st Congressional District primary contests.”) (emphasis supplied) (Attachment 1, p. 12). In addition, having two elections within three weeks of each other appears to have resulted in confusion to the public. *See, e.g., Overlapping Campaigns Confront Voters, Candidates in New Mexico*, ASSOCIATED PRESS POLITICAL SERVICE, May 29, 1998 (“‘I think its confusing to the voters,’ said one candidate, Republican Heather Wilson. ‘We’re working hard to explain the situation to people.’”) (Attachment 1, p. 14); *Primary Winds Toward Finale*, ALBUQUERQUE JOURNAL, June 1, 1998 (“‘Especially in Albuquerque, we have this once-in-a-lifetime situation where much of the primary is overwhelmed by the special election,’ [New Mexico Republican Party Chairman John] Dendahl said. ‘People’s eyes are being taken off that ball.’”) (Attachment 1, p. 16) Accordingly, rather than being mitigated by circumstances, any violation by either of these candidates or their committees is aggravated by the circumstances.

Further, when the failure to timely file a Form 2 has resulted in a delay in either filing a disclosure report or a failure to file that report, the Commission has pursued the violations with an enforcement action. *See, e.g., MUR 2646 (Neal)* (month and a half delay in filing Form 2

bags similar to those at issue in MUR 4416, respondent, a candidate’ principal campaign committee, has indicated that it did not produce, pay for or authorize the bags in question.

resulted in committee's failure to file April quarterly report), MUR 2615 (Wieder) (three month delay in filing Forms 1 and 2). Given Maloof's failure to file a timely Form 2 and Friends of Maloof's failure to file a 1997 Year End Report, the Commission received its first disclosure report from his committee on April 19, 1998. Accordingly, the expenditures made by and contributions made to his principal campaign committee became available to the public only a month and a half before the relevant election. This failure to file, along with the undisputed failures to include disclaimers on direct mail advertisements, outdoor signs and solicitations on at least three different occasions, resulted in a significant failure of disclosure. *See FEC v. Gus Savage for Congress '82 Committee*, 606 F.Supp. 541, 545 (N.D. Ill. 1985) ("At the heart of the Act are its disclosure provisions which impose reporting obligations on political committees and treasurers. Important government interests are sought to be vindicated by these disclosure requirements.")

In recent disclaimer matters, the Commission determined civil penalties by reference to the amount spent on the ads (e.g., printing and distribution costs) and how many ads were distributed. *See, e.g.* MUR 4416 (Hamilton for Congress) (amount spent); MUR 4121 (Lipinski for Congress) (amount spent and number distributed); MUR 3960 (Whitfield for Congress) (circulation of newspaper in which ad appeared); MUR 3439 (Massachusetts Democratic State Committee) (amount spent and number distributed). Though it appears that approximately 100,000 direct mail pieces were sent, this Office has no information regarding the distribution of either the outdoor signs or the invitations to the fund-raiser. This Office also has no information as to the amount Friends of Maloof or Supporters of Maloof spent on any of the three advocacy


pieces at issue or even which committee made the relevant expenditures.⁹ Accordingly, this Office intends to pursue informal discovery solely to determine (1) the amount spent on the direct mail advertisements, outdoor signs and solicitations and (2) the distribution of those advocacy pieces.

III. RECOMMENDATIONS

1. Find reason to believe that Friends of Phil Maloof and Dolores Gonzáles, as treasurer, and Supporters of Phil Maloof and Theresa Keaveny, as treasurer, violated 2 U.S.C. § 441d(a).
2. Find reason to believe that Phillip J. Maloof violated 2 U.S.C. § 432(e)(1).
3. Find reason to believe that Friends of Phil Maloof and Dolores Gonzáles, as treasurer, violated 2 U.S.C. § 434(a)(2)(B).
4. Find no reason to believe that Friends of Phil Maloof and Dolores Gonzáles, as treasurer, and Supporters of Phil Maloof and Theresa Keaveny, as treasurer, violated 2 U.S.C. § 433(b)(2).
5. Approve the attached Factual and Legal Analyses and the appropriate letters.

Lawrence M. Noble
General Counsel

3/11/99
Date

BY: 
Lois G. Lerner
Associate General Counsel

Attachments:

1. News Articles
2. Factual and Legal Analyses (3)

⁹ Friends of Maloof's 12-Day Pre-Primary Report discloses disbursement totaling \$309,572.45; its July Quarterly Report indicates disbursements of \$1,488,368.97. Supporters of Maloof's 12-Day Pre-Special Election Report discloses disbursements totaling \$543,038.00, while its 30-Day Post General Report indicates disbursements of \$805,851.43. However, this Office is unable to determine the exact amount of money that was spent on the three items at issue, in part because the two committees' reports do not specifically itemize these disbursements. Further, unlike the direct mail pieces and solicitations, it is not clear that the disclaimerless outdoor signs were limited to the period between May and June 1998.

Citation

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Sunday, April 26, 1998

New Mexico & The West

Maloof Is Dems' Pick For Schiff Seat

John J. Lumpkin Journal Staff Writer

'98 ELECTIONS

State Senator Tabbed For Special Election

State Democratic party officials selected Phil Maloof by a vast majority Saturday as their candidate to replace the late Rep. Steve Schiff in New Mexico's 1st Congressional District.

Maloof, a state senator and the youngest son of the wealthy New Mexico family, defeated businessman Gary Van Valin to receive the party's nod to run in the June 23 special election.

He will face Republican Heather Wilson, the former secretary of the state's Children, Youth and Families Department, and Green Party candidate Robert Anderson, a professor at the University of New Mexico.

Maloof, who was considered the favorite to win the nomination, received 70 votes from members of the Democratic Central Committee. Van Valin received six votes.

"I'm overwhelmed," Maloof said after the votes were counted. "This is a fantastic day for me and my campaign. The focus is now Heather Wilson."

During a brief speech before the vote, Maloof, 30, touted his record in the state Legislature. He sponsored a successful "three-strikes, you're out" law in the Senate as well as several other crime- and education-related initiatives.

"I'm focusing on issues that matter most to all of us," he said. "Education, crime and getting our fair share of money for this district."

The Republican Schiff's death in March forced the special election

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ATTACHMENT

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in the 1st Congressional District, with the winner completing the remaining six months of Schiff's term. In November, voters will go to the polls again in the general election.

Van Valin, a retired Air Force colonel, said he will continue to campaign for the June 2 primary, in which he will face Maloof again. But he also said he will support Maloof to win in the special election.

He credited his loss to Maloof's greater funds and name recognition.

Maloof was appointed to his West Side Senate seat in 1993 and later won re-election to the post. He also is vice president of his family business, which has had interests in banking, casinos, beer distribution and the NBA's Sacramento Kings.

Because there is no incumbent, Democratic party officials say the special election is their best chance in decades to win the Congressional seat. Republicans have held the seat since 1968.

The district includes Albuquerque and Bernalillo County. It also contains all of Torrance County and parts of Sandoval, Santa Fe and Valencia counties.

TABULAR OR GRAPHIC MATERIAL SET FORTH IN THIS DOCUMENT IS NOT DISPLAYABLE

b/w; Caption: MALOOF: "This is a fantastic day"

---- INDEX REFERENCES ----

KEY WORDS: ELECTIONS

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Friday, July 18, 1997

Member of prominent family may seek seat in Congress
Associated Press

ALBUQUERQUE (AP) — Democratic state Sen. Phil Maloof said he's considering running for the 1st Congressional District seat held by Republican Rep. Steve Schiff.

"Right now, I'm just talking to key people in the district," said Maloof, whose family has built a vast fortune through banking interests, a beer distributorship, casinos in Nevada and Colorado and professional sports teams.

"A lot of people have come to me asking me to explore the opportunity to run," Maloof said. "I'm actively looking at it now."

Maloof has served in the state Legislature since 1993. He was appointed to fill the seat when then Sen. Martin Chavez was elected mayor of Albuquerque and won re-election to a four-year term last year.

While Maloof is contemplating seeking a seat in Congress, there is a petition drive within his legislative district which urges him to serve out the remainder of his term in the state House.

The petition effort is being headed by Jerry Daniele, the Republican that Maloof beat last year in the general election.

"I'm not out to hurt Phil in any way, shape or form, but we have a lot of problems at the local level," Daniele said. "Right now, we could use his firepower on the local level. I'd like him to stay the four years. Then he could go make a run for Congress."

Daniele said the petition drive has produced about 400 signatures.

Maloof said he is happy serving in the Legislature and has not made up his mind about his political future.

"I've enjoyed being a state senator," he said. "I've enjoyed it 100 percent. The people I've represented have been nothing but great to me."

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Albuquerque Journal
Copyright 1997

Sunday, October 26, 1997

A Long Absence

Story by Mike Taugher * Photograph by Mark Holm * Of the Journal

CONGRESSMAN AT HOME

Albuquerque's Steve Schiff, still at home recovering from cancer, plans to run for re-election. A critic says New Mexico is not properly represented.

It has been six months since Albuquerque's congressman has cast a vote, chaired his subcommittee or walked through the halls of Congress. Recovering from cancer, Rep. Steve Schiff has remained in New Mexico since April.

Schiff has had two operations and 35 radiation treatments and believes he has overcome the cancer. Along the way he's lost 25 pounds and developed a palsy in his face. His speech is slurred and he can't chew solid food.

The former prosecutor and fifth-term Republican congressman said he still isn't sure when he'll be able to return to Washington, acknowledging that he missed two earlier self-imposed deadlines.

But he makes no bones about his plans -- he intends to complete his term, and he intends to run for re-election next year.

"So far, I intend to refile and run again," Schiff said in an interview last week.

His office has begun gathering signatures and sending out fund-raising letters.

"The recovery has taken a longer time than I imagined," Schiff said.

He said the physical problems he now has are symptoms of the cure and not of the disease. The cancer appears to be gone.

Most people interviewed by the Journal for this story said Schiff's absence has not been a problem to date.

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State Democratic Party Chairman Ray Sena was an exception.

He said Schiff's absence compounds a representation problem for New Mexico, whose three members of the U.S. House of Representatives are Republicans.

Sena said New Mexicans lack adequate representation in Washington because Schiff has been ill; because Rep. Bill Redmond was elected with less than a majority in a low-turnout election; and because Rep. Joe Skeen has Parkinson's disease -- an illness that Skeen said has not affected his performance.

"You've got Skeen with Parkinson's, and Schiff with cancer, and Bill Redmond representing 13 percent of the voters. We have no representation in New Mexico," Sena said.

A Skeen aide called Sena's comment -- the second time he has publicly questioned Skeen's competence because of his medical condition -- "an all-time low in New Mexico politics."

The job

Schiff has been a popular congressman, easily winning re-election. He's regarded as a decent man and a serious-minded politician.

In facing his personal crisis, Schiff has remained accessible to reporters and photographers even at his most vulnerable.

In an interview last week in his modest university-area Albuquerque home, the 50-year-old congressman appeared weary but dutifully open and characteristically sincere.

"I'm doing the best I can," he said. "I sleep until late morning, where before I couldn't sleep at all. Eating has been a serious problem since the palsy came. I'm on aliquid diet."

Although he has missed many votes and has been unable to chair his subcommittee -- the Basic Research subcommittee of the House Committee on Science -- most observers agree he hasn't missed much. Since April, Congress has had few, if any, close votes on critical issues.

"This half of this session has been a time of cooperation between Congress and the administration," said Schiff spokesman J. Barry Bitzer. "It hasn't been a time of rancor, when votes are close."

Bitzer said Schiff's office is running at full strength, and that service to his constituents is unaffected by Schiff's absence from Washington.

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One probable Democratic contender for Schiff's seat next year is state Sen. Phillip Maloof. But Maloof, who said he is "about 75 percent" certain he will run, declined comment on whether Schiff's illness has affected Albuquerque.

"I wish him the best. I hope he gets better," Maloof said.

Schiff's 1996 opponent, Democrat John Wertheim, agrees that Schiff's constituents have not been hurt -- but he adds that may change soon.

Wertheim, who said he is leaning against another run for Schiff's seat next year, said Schiff has to decide soon whether he can return to his post full time.

"If he does not return to Washington by Jan. 3 for the new session, he's going to have to seriously consider whether he can continue to be in Congress," Wertheim said. That's because, according to Wertheim, budget issues that coasted through this year may be tougher next year.

Wertheim adds that if Schiff drops his re-election plan, he should do it before the March filing deadline for candidates.

"He really does need to make a decision in that time frame of January or so," said Wertheim.

A little more time

Schiff agreed, but said those questions are already answered.

Stepping down at this point is out of the question, he said. After a career spent in public service, Schiff said, he just needs to use some sick time.

"I don't see any reason to step down. Although I'm missing some time, back when I was district attorney, I didn't take a day off for eight years," he said.

But is it fair to Schiff's constituents that their representative in Congress is on such an extended absence?

"I think it's unavoidable," Schiff responded. "The congressman got sick with cancer and its side effects. If I had a prognosis that I was never going to recover either from the cancer or the side effects, I would certainly not run for re-election. But I have no such prognosis."

Asked how much longer his absence can continue before it begins to

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affect Albuquerqueans, Schiff responded, "I can't precisely answer that."

After missing at least two anticipated return dates, he is no longer making predictions about when he'll return to Washington.

"I've had several expectations dashed already," he said.

What the doctor says

Schiff's recovery has not been unusually slow, said Dr. Paul Anthony, a radiation oncologist and partner of Schiff's doctor.

"It's pretty typical," said Anthony, who reviewed Schiff's medical records. "You'd like to see him recover a little quicker, but it's not something that worries me. He's still in remission."

It can take some patients six months or so to feel better following radiation therapy, and Schiff was given aggressive radiation treatment, Anthony said. Schiff's last treatment was in late June, and by then, after a seven-week series, the congressman had received the equivalent of about 6,000 rads of radiation.

Anthony said doctors are watching to make sure the cancer does not return.

"There's no evidence of recurrence of the disease," he said. "His current situation is stable, but we're watching and trying to determine how slowly or quickly he'll be back to a fully recuperative point."

Surgery and radiation

Schiff underwent his first surgery on a form of skin cancer called squamous cell carcinoma last December, two months after the growth was detected on his ear. Although doctors removed the tumor, it was later discovered that the cancer was still present and had spread from his ear into his face and head. However, doctors and Schiff now say they do not believe the cancer spread to other parts of Schiff's body.

A second surgery in April was performed in which doctors removed part of Schiff's ear and an infected salivary gland. It was discovered at the time that a facial nerve was involved, and radiation was chosen as the best way to clean out remaining cancer.

Shortly after the second surgery, Schiff said he expected to return to Washington within about two months -- after radiation therapy.

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But he missed that self-imposed deadline in July, and another one in September.

What the polls say

Despite Schiff's long absence, Albuquerque voters so far seem prepared to cut their hard-working congressman some slack. The Republican Party recently commissioned a poll that attempted in part to measure whether Schiff's illness was affecting his political support.

It showed 75 percent of those polled have a favorable impression of Schiff -- and only 10 percent an unfavorable impression.

"Seventy-five and 10 is a new record, I believe," said Bitzer, Schiff's spokesman. Previously, Schiff's support was in the 60s and criticism of him in the teens.

Poll respondents were also asked whether they would vote for Schiff or for Albuquerque Mayor Martin Chavez in a hypothetical contest between the congressman and Chavez, who is planning to run for governor. The poll showed Schiff winning, 60 percent to 22 percent.

"My guess is that those numbers are assisted probably by a combination of the fact that Steve is sick and that Marty has not expressed an interest in that seat," Bitzer said.

Still, Schiff acknowledges his illness could hurt his run for re-election. He hopes to prove his health to voters.

"I think that will be demonstrable during the campaign," he said. "These temporary problems go away."

John Dendahl, chairman of the Republican Party of New Mexico, said, "There haven't been any close votes in the House of Representatives. Yes, it would be nice to have your representative in Washington, but I don't think Albuquerque has missed much by his not being there."

But Sena, Dendahl's Democratic counterpart, said the state's three Republican congressman are not representing the state well in Congress.

And although Skeen's office said Parkinson's has not affected his work in Congress, Sena contends that it has. "Just look at his comments," Sena said.

That remark was the second time, at least, that Sena has publicly

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attacked Skeen's competence because of his medical condition. In July, Sena questioned Skeen's mental alertness and suggested Skeen might be suffering from Alzheimer's disease.

"His first cheap shot was excusable," said Skeen spokeswoman Selma Sierra. "A second one is way beyond any human decency on his part. This is an all-time low in New Mexico politics."

Schiff's campaign chairman since 1989, Albuquerque attorney John Polk, said that at this early stage Schiff's re-election plans are unaffected by his illness. Fund-raising letters have been sent, and the nucleus of Schiff's campaign team is forming and considering which campaign workers to put where.

"We're just doing things as we normally do. The campaign is just going along as if nothing has happened," Polk said.

But the congressman acknowledges his fund raising is behind schedule. Schiff said the campaign has about \$50,000, a figure he wants to double by the end of the year.

"I'm behind in my fund raising right now. I haven't had time to work on it," he said.

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Color; Caption: Rep. Steve Schiff with his dog Rocky: Surgery and radiation treatments have left him thinner, with slurred speech and a facial palsy. But the cancer seems to be gone.

---- INDEX REFERENCES ----

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1998 WL 7379265

The Associated Press Political Service
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Saturday, January 24, 1998

Albuquerque businessman announces congressional bid
Associated Press

ALBUQUERQUE (AP) _ Business consultant Gary Van Valin announced his candidacy Saturday for the 1st Congressional District seat held by Republican Steve Schiff, making him one of two Democrats running for the office.

Van Valin, who has lived in Albuquerque for eight years, will oppose Democratic state Sen. Phil Maloof of Albuquerque in the June primary. Maloof announced his candidacy earlier this month.

Schiff, who was first elected in 1988, is seeking re-election to a sixth term.

Van Valin, 54, said he has never run for public office but has worked on a few political campaigns, including the successful 1994 re-election bid of Sen. Jeff Bingaman, D-N.M.

Owner of the business consulting firm Keystone International Inc., Van Valin said he has considered running for office for nearly 10 years.

He said the main issue in his campaign will be economic growth, specifically in the area of job expansion.

"I've asked a lot of people already about the burning issues here," he said. "You don't get a lot of responses about burning issues, but people do talk about one concern _ the economy."

More federal money should be brought into New Mexico, Van Valin said, and he noted that the congressional delegation should work with state officials to attract quality jobs.

"We need to ensure that we can get more high-paying jobs," he said. "New Mexico is not keeping up with our neighbors in getting industries that have higher-paying, higher-quality jobs. It's something that we should do more of."

He said he would also work to improve the quality of education and

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the environment in the state.

An Air Force Academy graduate, Van Valin received a master's degree in public administration from Harvard University's John F. Kennedy School of Government. While in the service, he was twice stationed in New Mexico _ at Holloman and Cannon Air Force bases.

Schiff is seeking re-election, despite spending more than a year battling an aggressive skin cancer on his face. Numerous radiation treatments, two operations and chemotherapy kept him away from Washington, D.C., for much of 1997.

Republican Party officials have said that another candidate will run in the GOP primary to make sure the party would have someone on the general election ballot if Schiff's health forced him to drop out. But no candidate has formally announced.

---- INDEX REFERENCES ----

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ORGANIZATION: KEYSTONE INTERNATIONAL

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STORY ORIGIN: NEW MEXICO

Word Count: 384

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Sunday, May 31, 1998

Heather Wilson, Phil Maloof on top in pre-election polls
Associated Press

ALBUQUERQUE (AP) - Republican Heather Wilson and Democrat Phil Maloof, apparently benefiting from advertising for a special election later this month, were the solid leaders in polls conducted for their 1st Congressional District primary contests.

With the primary election looming on Tuesday, Wilson was the choice of 54 percent of likely Republican voters and Maloof was the pick of 67 percent of likely Democratic voters in the random telephone surveys made last week.

The results of the polls were reported in Sunday's editions of the Albuquerque Journal. The polls were conducted for the Journal by Research and Polling Inc.

Wilson, a former member of Gov. Gary Johnson's Cabinet as secretary of the Children, Youth and Families Department, and three others are on the ballot in the Republican contest, while Maloof, a state senator from Albuquerque and a member of one of the state's most prominent business families, has one opponent in the Democratic race.

They are seeking the nominations of their respective parties for the November general election. Green Party candidate Bob Anderson is unopposed for his party's nomination.

But Wilson and Maloof, along with Anderson, also are on the ballot for the June 23 special election to fill out the remainder of Republican Congressman Steve Schiff's term. Schiff, a five-term Republican, died of cancer in March.

Wilson and Maloof were the picks of party activists for the nominations for the special election and have been running dual primary and special election campaigns.

Brian Sanderoff, president of Research and Polling, said the nominations, and the advertising blitzes the candidates and their parties have launched in anticipation of the special election battle,

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appear to be boosting Wilson and Maloof in the primary contest.

"It's hard to turn on the television set without seeing one of them," he said.

In the Republican primary poll of 400 likely voters in the district that is dominated by Albuquerque, Wilson was the leader with 54 percent, while 13 percent backed state Sen. Bill Davis and 2 percent supported 1996 independent candidate Betty Koury.

Albuquerque lawyer Alan Wilson, who withdrew from the race in April but too late to have his name removed from the ballot, also got 22 percent.

Twenty-nine percent of the Republicans said they were undecided. The margin of error for the Republican sample was plus or minus 5 percentage points.

For the Democratic primary, a poll of 139 likely Democratic voters in the district was conducted, and 67 percent backed Maloof and 14 percent supported Albuquerque businessman Gary Van Valin. Nineteen percent were undecided.

The Democrat sample had a margin of error of plus or minus 8 percentage points.

The polls were conducted May 25-28.

----- INDEX REFERENCES -----

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STORY ORIGIN: NEW MEXICO

Word Count: 443

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Friday, May 29, 1998

Overlapping campaigns confront voters, candidates in New Mexico

JIM McELROY

Associated Press

ALBUQUERQUE (AP) - The campaign for the late Rep. Steve Schiff's seat in New Mexico is sending people to the polls twice in three weeks.

Voters will nominate candidates for November's general election in Tuesday's primary, then return to the polls June 23 for a special election to determine who will fill out the last six months of Schiff's term.

Both national parties have taken a keen interest in the race. The GOP wants to hold onto Schiff's seat and its majority in the House, while Democrats are seeking to pick up a seat and generate momentum going into November.

The Republican and Democratic front-runners are on the ballot in both elections. Then there are the third party and fringe candidates.

"I think it's confusing to the voters," said one candidate, Republican Heather Wilson. "We're working hard to explain the situation to people."

Wilson, a moderate whose candidacy has the backing of the state's powerful Republican Sen. Pete Domenici, is facing state Sen. Bill Davis and another conservative in the GOP primary.

On the Democratic side, state Sen. Phil Maloof, a member of one of New Mexico's wealthiest and most prominent families, faces businessman Gary Van Valin.

Wilson and Maloof are also on the special election ballot, along with a Libertarian, a write-in and a Green Party candidate.

Schiff, who died of skin cancer in March, had announced early in the year he would not seek re-election to a sixth term. Candidates began lining up for the primary. Then Schiff died and a special

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election was called.

Maloof's family has extensive business holdings that include hotels, casinos, banks, beer and liquor distributorships and part of pro basketball's Sacramento Kings. The 31-year-old has loaned his campaign \$648,000, raised \$172,846 and declined contributions from political action committees.

Wilson, 37, who quit as secretary of the state's Children, Youth and Families Department, is the only candidate who has been able to generate comparable financial backing. She has raised \$464,750. No other candidate has raised more than \$30,000.

Both have pledged to fight crime, improve education and protect working families if elected.

---- INDEX REFERENCES ----

KEY WORDS: EDUCATION; POLITICAL

STORY ORIGIN: UNITED STATES

Word Count: 348

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Albuquerque Journal
Copyright 1998

Monday, June 1, 1998

Primary Winds Toward Finale
Cindy Glover Journal Politics Writer

'98 ELECTIONS

Ballot Confusion May Sap Turnout

Tuesday marks the end of a primary election season that has been described as confusing and lackluster.

Registered voters will go to the polls between 7 a.m. and 7 p.m. Tuesday to pare 134 candidates in contested races down to 52.

Only registered Democrats, Republicans and Greens are eligible to participate in voting for primary election nominations Tuesday. The ballot opens up to independents and other party members in the November general election.

Tuesday's ballot includes the governor's office, three U.S. House seats, the 70-member state House and five seats on the new Public Regulation Commission.

The primary election ballot is crowded, especially with Democratic candidates. Many Republicans are running without opposition in their own party.

In the prominent Republican contest in the 1st Congressional District, Tuesday voting might have been upstaged by the upcoming special election on June 23 to fill the Albuquerque-area seat of the late U.S. Rep. Steve Schiff. Schiff, a Republican, died in March.

The busy ballot and the possibly confusing special election -- plus a strong economy and great weather -- have party leaders and candidates forecasting a low turnout.

"People are in a sort of comfort zone," state Democratic Party chairman Ray Sena said. "Crime is down and the national economy is in better shape than it's ever been."

Sena added that, although sniping among candidates hasn't been as

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vicious as in 1994, voters have been fed a steady diet of attack ads on television and radio.

"Negative advertising turns people off and discourages them from getting involved in the political process," said Sena, who has sharply criticized the Republicans and some of his own party's candidates for such tactics.

In the gubernatorial contest Tuesday, six Democrats are jockeying for the chance to go up against incumbent Republican Gov. Gary Johnson, a popular and independent-minded conservative who has stymied even members of his own party with his record-setting number of vetoes.

The Democrats are: former Albuquerque Mayor Martin Chavez; state Rep. Gary King; former Gov. Jerry Apodaca; state Auditor Robert Vigil; public dispute mediator Reese Fullerton; and former Court of Appeals Judge Ben Chavez.

Brian Sanderoff, president of Research & Polling Inc., said he thinks the size of the field is both a blessing and a curse for voters.

On the one hand, it increases the likelihood that a candidate with strong credentials will win.

"But when many candidates run for the same office, the candidates have a harder time getting their message to the public, the media has a harder time presenting the race and the voters have a harder time making up their minds," Sanderoff added.

The same can be said of the 3rd Congressional District, which encompasses 17 counties, generally in the northern part of the state.

U.S. Rep. Bill Redmond, who achieved an upset victory in a special election in May 1997, has only write-in opposition in the Republican primary.

But, on the Democratic side, there are eight candidates who consider Redmond vulnerable and are vying for the chance to unseat him.

The Democrats include: state Corporation Commissioner Eric Serna, who narrowly lost the seat in 1997; state Attorney General Tom Udall; state Sen. Roman Maes III, of Santa Fe; and former state Supreme Court Justice Tony Scarborough. Also running are Santa Fe lawyers Eric Treisman and Francesca Lobato, retired Bloomfield public school administrator Carol Cloer and Gallup public administrator Patricia Lundstrom.

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Although the field is altered, that race might seem overly familiar to voters confronted with the special election in the 3rd district just 12 1/2 months ago.

In the 2nd Congressional District, U.S. Rep. Joe Skeen, R-N.M., has no primary opposition. Former state Rep. E. Shirley Baca and state Sen. Mary Jane Garcia are competing for the Democratic nod on Tuesday.

"The Republicans have historically low turnout in primaries, and there's no reason to expect it will be better. There's an uncontested primary for governor and two uncontested Republican incumbents for Congress," Sanderoff said.

"The Democrats have a few more interesting things happening. There's an interesting race for governor and a competitive situation in the 3rd Congressional District," he added. "But at best, I think turnout will be average."

Turnout among eligible Republicans has averaged 38 percent in the past five gubernatorial primaries. Democratic turnout has averaged 47 percent.

State Republican Party Chairman John Dendahl agreed that probably fewer Republicans than average will cast ballots Tuesday.

"Especially in Albuquerque, we have this once-in-a-lifetime situation where much of the primary is overwhelmed by the special election," Dendahl said. "People's eyes are being taken off that ball."

There are four candidates on the Republican primary ballot for the 1st Congressional District: former state Cabinet Secretary Heather Wilson, state Sen. Bill Davis, Betty Koury and Albuquerque attorney Alan Wilson.

Alan Wilson dropped out of the race in April, too late for his name to be removed from the ballot.

There are two Democrats seeking their party's nomination Tuesday: state Sen. Phil Maloof and Albuquerque businessman Gary Van Valin.

Heather Wilson's and Maloof's campaigns got big boosts when their parties nominated them to be in the special election.

The pair have been outpacing all of their primary rivals in terms of advertising, helped in large part by partisan contributions from Washington, D.C., or family money.

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Lower on the ballot, contested races include:

* Twenty-four of the 70 seats in the state House. Republicans are outnumbered 42-28 but hope to narrow the gap with elections this year. The GOP has not controlled the House since 1952. State senators are not up for another two years.

* Eighteen candidates are vying for five seats on the new Public Regulation Commission, which will license every corporation in the state and oversee gas and electric utilities, phone companies and truck companies, among others.

* Republican Lt. Gov. Walter Bradley is unopposed in the primary. Two women are competing for the Democratic nod for lieutenant governor -- Secretary of State Stephanie Gonzales and Albuquerque business owner Diane Denish. If either Denish or Gonzales is elected in November, she would be the first female lieutenant governor in state history.

* Voters also will nominate candidates for: attorney general, secretary of state, state auditor, state treasurer, state land commissioner, state Supreme Court justice, District Court, state Board of Education and county offices.

---- INDEX REFERENCES ----

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Albuquerque Journal
Copyright 1998

Wednesday, December 30, 1998

NEW MEXICO

Maloof Tally: \$5.3 Million
Barry Massey The Associated Press

Only Gingrich Campaign Costlier

SANTA FE -- Democrat Phil Maloof ran the second most expensive primary and general election campaign for a House seat nationwide, according to the Federal Election Commission.

Only outgoing House Speaker Newt Gingrich, R-Ga., spent more than Maloof, who lost to Republican Rep. Heather Wilson in New Mexico's 1st District in the November general election and a June special election.

Maloof, a state senator from Albuquerque, had total spending of nearly \$5.3 million through Nov. 23 for his primary and general election campaigns. However, that was the most spending by any House challenger -- loser or winner.

Gingrich's campaign committee spent \$7.3 million between Jan. 1, 1997, and Nov. 23, 1998. Much of that went to help fellow House Republicans, however.

The FEC released a report on Tuesday ranking the most expensive congressional campaigns.

Maloof and candidates in New Mexico's 3rd District were listed among the top 50 in spending:

*n Rep.-elect Tom Udall, a Democrat who won the 3rd District seat in November, was 21st in total spending nationally by all candidates: \$1.56 million. He ranked 3rd in spending by challengers.

* Outgoing Rep. Bill Redmond, the Republican who lost to Udall, was 34th in spending: \$1.37 million.

The FEC did not include in its figures the spending by Maloof for

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the special election. That ensures an "apples to apples" comparison of campaigns across the country, said Kelly Huff, a spokeswoman for the FEC. Most candidates only ran in primary and general elections.

Maloof's special election campaign had total disbursements of \$2.6 million, which included \$1.3 million in loan repayments to the candidate.

Maloof's campaign contends that its net operating expenditures -- nearly \$6.5 million for the primary, special and general election races -- is the best yardstick of campaign costs because the figure doesn't include loan repayments made to the candidate.

Wilson had total spending of \$2.5 million on her three races -- the GOP primary, June special and November general elections.

She, unlike Maloof, had only one campaign committee for the three races, and that makes it impossible to use the FEC finance reports to precisely segregate spending for the special election. As a result, the latest FEC report tallied Wilson's expenditures only since mid-July -- nearly \$1.1 million -- for purposes of candidate comparisons.

Maloof's campaign was mostly self-financed, with loans of personal money and bank loans guaranteed by the candidate. The FEC reported that Maloof was No. 1 in the nation in campaign receipts from candidate loans or personal contributions, about \$5 million for the primary and general election. Next was a California Democrat, Douglas Ose, \$1.4 million.

Ryan Lindsey, director of operations for Maloof's campaign, said Tuesday that Maloof spent his own money rather than accept contributions from political action committees. PACs are formed by corporations, labor unions and other trade groups to make campaign contributions.

"He was willing to finance the campaign personally. He didn't take any special interest money," said Lindsey.

By any measurement, the 1st District race set spending records for New Mexico politics.

The previous spending record for a congressional race in New Mexico was in 1988, when the 1st District seat opened with the retirement of longtime GOP incumbent Manuel Lujan. Republican Steve Schiff and Udall spent a combined \$1.1 million on their primary and general election campaigns.

In 1994, Democrat U.S. Sen. Jeff Bingaman and Republican

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(Publication page references are not available for this document.)

challenger Colin McMillan spent nearly \$5.2 million on their primary and general election campaigns.

This year's special election in the 1st District filled the vacancy of Schiff, who died of cancer in March.

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Caption: MALOOF: Led U.S. in loans to campaign; Photo: b/w

----- INDEX REFERENCES -----

KEY WORDS: ELECTIONS

Word Count: 596

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

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

DATE: MARCH 17, 1999

SUBJECT: MUR 4759 - First General Counsel's Report
dated March 11, 1999.

A handwritten signature, likely of Lisa R. Davis, is written in a circle next to the "FROM" line.

The above-captioned document was circulated to the Commission
on Friday, March 12, 1999.

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

Commissioner Elliott	—
Commissioner Mason	—
Commissioner McDonald	—
Commissioner Sandstrom	XXX
Commissioner Thomas	XXX
Commissioner Wold	—

This matter will be placed on the meeting agenda for
Tuesday, March 23, 1999.

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