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October 13, 1998

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F. Andrew Turley, Esquire
Central Enforcement Docket
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: MUR 4800 -- Nick Smith For Congress Committee and
F. Robert Lally, as treasurer; The Honorable Nick Smith

Dear Mr. Turley:

On behalf of the respondents listed above, this will respond to the complaint filed in this matter.

An individual with more time on his hands than actual knowledge of the Federal Election Campaign Act has filed a voluminous complaint against the Nick Smith For Congress Committee. Much of the complaint is unintelligible and, therefore, difficult to respond to in substance. It also fails to comply with 11 C.F.R. § 111.4(3) since it does not "contain a clear and concise recitation of the facts which describe a violation." Such a defect warrants dismissal.

As for the parts that the respondents can understand, the Commission should take no further action in this matter. Other than duplicating contributor names from the Committee's reports filed with the Commission, it is less than clear how the complainant believes the Act or the Commission's Regulations have been violated. The complaint alleges nothing more specific than alleged excessive contributions, failure to report contributions from political action committees and contributions by foreign nationals, offering only sheer volume of unsubstantiated factoids in support. Search as it may, the complaint on its face fails to allege a violation in most instances, and a review conducted by the Committee has so confirmed. The remaining instances are discussed below.

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Statute of Limitations: Since the statute of limitations relevant to this complaint is five years, allegations stemming from the 1992 election cycle are no longer timely. *See FEC v. Williams*, 104 F.3d 237, 239 (9th Cir. 1996), *cert. denied*, 118 S.Ct. 600 (1997).

Foreign Contributions: Typical of the complaint is its major allegation that any contribution by a "Japanese sounding individual" must be a prohibited contribution to the Committee. This unfortunate stereotyping in an attempt to score political points is regrettable. In every case, the contribution at issue was written on a check from a United States bank by a person with a domestic address. Respondents had no reason to believe that any of the contributions came from prohibited sources, despite the allegations in the complaint.

Inaccurate Allegations: The complaint's factual assertions are often inaccurate. For example:

*No. 7 -- John Demmer -- There are two John Demmers -- one lives in Lansing and one in Dearborn. There is no excessive contribution.

*No. 10 -- Constance Farver -- The complaint incorrectly states the election for which the report filed with the Commission shows the contribution was made (it was made for the 1998 general election).

*No. 11 -- Herb Farver -- The complaint incorrectly states the election for which the report filed with the Commission shows the contribution was made (it was made for the 1998 general election).

*No. 33 -- Bill Lambkin -- The Committee received two \$1,000 contributions from William Lambkin for the 1995-96 election cycle. Both of the contributions were inadvertently reported as primary contributions when one should have been reported as a \$1,000 contribution to general election. The Committee will amend its reports.

*No. 43 -- Sietsema Orchards -- This is an unincorporated business own by Jerry Sietsema. The check was written from a personal account from which he runs his unincorporated business.

*No. 47 -- Peter Rosewig, Jr. -- The complaint incorrectly states that two donations were reported. There is only one on the Committee's FEC reports (pre-primary, as opposed to the complaint's assertion of a Third Quarter donation).

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Reattributions: The complainant is apparently unfamiliar with the reattribution and redesignation provisions of the regulations. While respondents did not always conduct these proceedings properly in the 1994 cycle, they became fully aware of the law and believe they complied with the regulations as closely as possible for the 1996 and 1998 cycles. Accordingly, many of the alleged excessive contributions are accurately reported as received and were or will be the subject of redesignations and reattributions properly reported when they happened or will happen.

PAC Contributions: The committee does not accept PAC contributions. As such, the committee returned without depositing the checks from Keep Our Majority PAC, Leadership 2000 PAC and the National Turkey Federation PAC. The National Pork Producers Council PorkPAC was reimbursed for its in-kind contribution once the committee received notice of it. The \$16 National Right to Life Video, given as an in-kind contribution, was returned upon receipt. Accordingly, all the contributions questioned would be reported by the contributing PAC but not by the Committee since it returned them upon receipt without ever depositing them.

Summary: The Committee believes that the charges leveled by this complaint are an attempt to distract the campaign and do not rise to the level of any violations of the Act against which the Commission should act. In a moment of undoubtedly unintended candor, the complaint states: "The complainant feels these issues are worthy of further investigation by the FEC, but does not have further corroborative details on which to base specific complaints." Complaint at 9. Translated, this demonstrates this complaint to be an attempt to have the Commission launch a fishing expedition. Respondents ask that the Commission not embark on this journey and vote to dismiss this complaint.

Respectfully submitted,


Benjamin L. Ginsberg

BLG/jmt