

Bernard Gomberg
83 Monterey Gardens
Bardonia, New York 10954

RECEIVED
FEDERAL ELECTION
COMMISSION

October 21, 1998

OCT 26 12 05 PM '98

BEFORE THE FEDERAL ELECTION COMMISSION

Paul Feiner for Congress
FEC ID Number C00332411

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Paul J. Feiner

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MUR 4838

OCT 26 12 05 PM '98

COMPLAINT

Now Comes Bernard Gomberg, bringing this complaint pursuant to 2 U.S.C. § 437g(a)(1). Mr. Gomberg may be reached at 83 Monterey Gardens, Bardonia, New York 10954.

I. SUMMARY

Paul J. Feiner is the Democrat candidate for United States Congress from the district of New York. Mr. Feiner (or his agents) has violated federal law by failing to include disclaimer notices on public political advertising.

Federal law requires individuals or committees who make communications expressly advocating the election or defeat of a clearly identified candidate to "clearly state" who paid for such communications. 2 U.S.C. § 441d; 11 C.F.R. § 110.11. Feiner's campaign committees violated this federal law on multiple occasions.

A. Failures to Include Legally-Required Disclaimers on Magazine Advertising

An advertisement appears in the October 1998 edition of the Nyack Villager, expressly advocating Feiner's election ("Elect Paul Feiner.") Presumably, this ad was paid for by the Feiner for Congress Committee. However, the ad lacks a disclaimer as required by 2 U.S.C. § 441d and 11 C.F.R. § 110.11.

B. Feiner Yard Signs Lack Disclaimers

Numerous "Paul Feiner Congress: Time for a Change" yard signs have been posted in locations around the district, advocating Feiner's election. (*See photo of signs, attached*). These signs also fail to who paid for them and whether they were authorized by the Feiner committees, as required by law. 11 C.F.R. § 110.11 (requiring disclaimers on "outdoor advertising facility, yard sign"). The Commission has repeatedly upheld the requirement that campaigns include disclaimers on billboards, yard signs and other outdoor displays, and the Feiner campaign is not exempt from this law.

C. Feiner Web Site Lacks Disclaimer

Lastly, a web site expressly advocating Feiner's election and soliciting funds for his campaign appears at <http://members.xoom.com/otrainmano/>. The Commission has ruled that Internet solicitations constitute public political advertising and require a disclaimer. *See FEC Advisory Opinion 1995-9*. Once again Feiner's campaign (or the sponsor of this web site) fails to comply with the basic public disclosure requirements of 2 U.S.C. § 441d.

Furthermore, the solicitation fails to include a statement informing potential donors that "contributions are not deductible for federal income tax purposes." Internal Revenue Code regulations require this notice for all solicitations by campaigns that raise over \$100,000. *See 26 U.S.C. sec. 6113; see also IRS Notice 88-120*. Complainant hereby requests that the Commission forward this violation of the Code to the proper authorities at the Internal Revenue Service.

III. PRAYER FOR RELIEF


However, the Feiner Campaign Committee's pattern of noncompliance with public disclosure laws is unacceptable. Ignorance of the law is no excuse, nor is the remote likelihood of Feiner's success. The Commission should take swift and appropriate actions to deter future violations of the law by Feiner's campaign committee. Further, the Commission should hold Feiner's campaign to the same disciplinary standard applied against other committees that failed to comply with this law in the past.

Respectfully Submitted,


Bernard Gomberg

State of New York

Signed and sworn to before
me this 21th day of October, 1998.


NOTARY PUBLIC
My commission expires: March 30, 2000

MARCIA M. NORTON
NOTARY PUBLIC, State of New York
No. 44-8044725
Residing in Rockland County
Commission Expires March 30, 2000



Vol 5 No10

The Nyack Villager™ October 1998

Celebrating life and the arts in Upper Nyack, Nyack, Central Nyack, South Nyack & the Grand Views

A Nyack tragedy

by Shel Haber

On a warm summer afternoon the Hudson River took one man's life and ended another man's dream.

It was a beautiful August Sunday. The Nyack Water Taxi, *Conservator*, was filled with happy sightseers. Suddenly, near mid-river *Conservator* filled with water, swamped and then capsized, throwing its passengers into the river. The desperate passengers grabbed at the slippery pontoons as the crippled boat drifted down river. Some dived under the boat to pull out trapped children while others struggled to find life jackets.

Ashore in the River Club Restaurant, Michael Hekker saw the people in the water. He called 911, then ran to the dock next to his restaurant, found

the second water taxi and piloted it out to the people floundering in mid-river. Mr. Hekker pulled 15 people from the water. His quick action is credited with saving many from further harm and perhaps drowning.

As the current dragged the disabled craft and people downstream, private boats reached the scene and lifted the remaining victims from the water.

Police and firefighters tried to get an exact count of those involved. Questioning survivors at the River Club, some wrapped in tablecloths to get warm, the police found the task difficult. Some rescuers had dropped off victims at different docks along the river so it wasn't until the police later spoke to survivors being treated at Nyack Hospital that they discovered one man still missing—Dr. Milton Salkind who had been trapped under the capsized craft. Two hours after

the accident a Piermont diver recovered his body. Dr. Salkind was 86, a retired Nyack dentist with a good many friends in this small village. When informed of the accident the Water Taxi's owner, Joseph Mitloff said, "My thoughts and prayers go to the family of Dr. Salkind and all who suffered injury in this accident."

For years Mr. Mitloff had hoped to bring public water travel back to the Hudson. Last year he shuttled passengers between Tarrytown and Piermont. This year he rented dock space in Nyack. The Water Taxi gained popularity as the summer progressed. But in Mr. Mitloff's own words, "It is a dream gone up in flames"

There will now be months of investigation of the accident, questions of overloading, certification and fault.

But we will miss the Water Taxi and mourn Nyack's Dr. Salkind. ★

A vision of Nyack's future as seen c. 1899

Below: a fanciful view of The Nyack of the Future. Dirigibles zoom overhead (no doubt speeding the commute from Upper Nyack to South Nyack). Note the Burd Street elevated railway and its likely terminus in the Hudson River. The Main Street Trolley was intended to connect Nyack to New York City.

This is one of many amusing, beautiful and historic pictures in the collection of Chuck Travers.



Visit us Online at
www.nyackvillager.com



Ask Dr. Diner

N Nyack Hospital
160 N. Midland Avenue
Nyack, NY 10960

Thanks to Nyack Hospital
Foundation and Community
Outreach for their assistance.

Q: Dear Dr. Diner:

What is COPD?

A.: COPD means Chronic Obstructive Pulmonary Disease and includes chronic bronchitis and emphysema. In COPD the bronchial tubes that carry air (oxygen) to the lungs become obstructed by mucus, infection and inflammation. In addition, the air sacs in the lungs may also be destroyed. Individuals with COPD usually have chronic cough and are short of breath, even with very little physical activity.

Intermittently, symptoms can become more intense with spasm of the bronchial tubes and increase in mucous secretions. In very severe advanced cases some patients may



become completely debilitated by this disease.

Patients with COPD are treated with medications that dilate the bronchial tubes, thereby allowing more air to be inhaled into the lungs. In more severe cases oxygen and certain steroid medications may also be necessary.

An overwhelming majority of cases of COPD are directly caused by cigarette smoking. Patients with COPD are, of course, strongly urged not to smoke. Cigar and pipe smoking do not increase the risk of COPD if the

smoke is not inhaled but they do increase the risk for other kinds of cancers.

Not smoking is the most effective way to prevent Chronic Obstructive Pulmonary Disease (COPD).

Martin K. Diner MD specializes in Behavioral and Preventive Medicine. In addition to his private practice he is Medical Director of Nyack Hospital's Care Center.

The Nyack Villager thanks Nyack Hospital Foundation and Community Outreach for their assistance. ★

Phone Numbers

VILLAGE SERVICES and GROUPS

AMBULANCE CORPS	911
TO REPORT A FIRE	911
POLICE (emergency only)	911
POLICE (non-emerg only)	359 3700
POISON CONTROL 1-800 +	336 6997
RPT CHILD ABUSE 1-800 +	342 3720
BATTERED WOMEN	634 3344
NYACK HOSP EMERGENCY	348 2345

■ Village Hall / Nyack 9 N Broadway	
OFFICE OF VILLAGE CLERK	358 0548
MAYOR'S OFFICE	358 0229
OFFICE OF TREASURER	358 3581
BUILDING DEPT	358 4249
DEPT PUBLIC WORKS	358 3552
FIRE INSPECTOR	358 6245
JUSTICE COURT	358 4464
PARKING AUTHORITY	358 3851
WATER DEPT (non emerg)	358 0641
WATER PLANT EMERG	358 3734
HOUSING AUTH 15 Highvw	358 2476
SECTION 8E	358 2591

■ Village Hall / S. Nyack 282 S Bdw	
OFFICE OF VILLAGE CLERK	358 0287

■ Village Hall / U. Nyack N. Bdw	
OFFICE OF VILLAGE CLERK	358 0084

■ Village Hall / Grand View 118 River Rd	
OFFICE OF VILLAGE CLERK	358 2919

Please notify The Nyack Villager if you spot any incorrect or obsolete numbers in this list.



Village of Nyack

PUBLIC SCHOOLS INFO	353 7013
SUPERINTENDENT	353 7010
SENIOR HIGH	353 7100
MIDDLE SCHOOL	353 7200
LIBERTY ELEMENTARY	353 7240
UPPER NYACK ELEM	353 7260
VALLEY COTTAGE ELEM	353 7280

RCC NYACK LEARNING CNTR	358 9392
EMPIRE STATE COLLEGE	358 3990
NYACK COLLEGE	358 1710
LITERACY COOPERATIVE	358 5700

NYACK CENTER	358 2600
NYACK PUBLIC LIBRARY	358 3370
NYACK POST OFFICE	358 2225
HEAD START OF ROCKLAND	358 2234
NYACK SENIOR CENTER	353 1311
REACH OUT TO YOUTH (ROY)	358 2884
YMCA NYACK	358 0245

CHILDREN'S MUSEUM	350 2191
ELMWOOD PLAYHOUSE	353 1313
HELEN HAYES BOX OFC	358 6333
HOPPER HOUSE ART CENTER	358 0774
MAIN STREET ARTS CENTER	358 7701
ROCKLAND CNTR FOR ARTS	358 0877

BOAT CLUB, NYACK	358 9724
BOAT CLUB, HOOK MTN	358 9874
COMMUNITY GARDEN	358 1734
FRIENDS OF THE NYACKS	358 4973
LIONS	358 1870
NAACP	358 1497
RED CROSS	358 0833
ROTARY	358 1194

ART CRAFT ANTIQUES DLRS	353 6981
CHAMBER OF COMMERCE	353 2221

THE NYACK VILLAGER 735-7639

PAUL FEINER DEMOCRAT FOR CONGRESS



Ben Gilman forgot to tell you

- ✓ he voted to repeal the ban on assault weapons.
- ✓ he voted a 32% cut in funds for the EPA, making it likely that polluters will go unpunished
- ✓ he cast the deciding vote against arts funding (1997)
- ✓ he voted to cut Head Start, school lunch & child nutrition programs

WE CAN DO BETTER!

www.feiner.org

(914) 472-4236

ELECT PAUL FEINER
FOR CONGRESS 20TH CD

INTERNET
SPYRALNET
914.348.7676

Electrolysis

AT LAST IN NYACK!

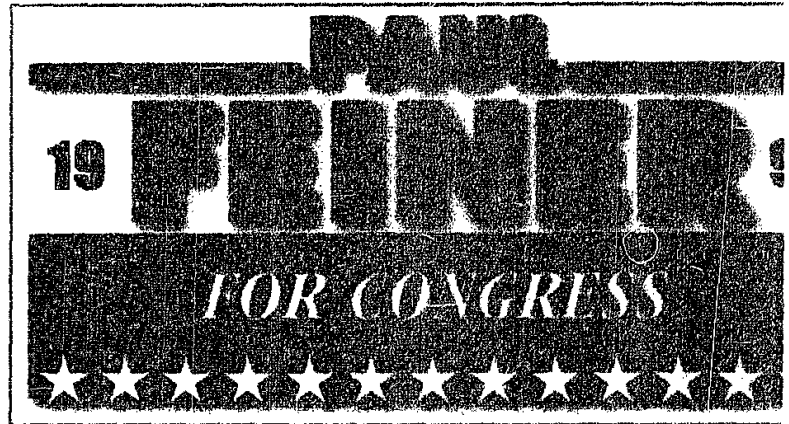
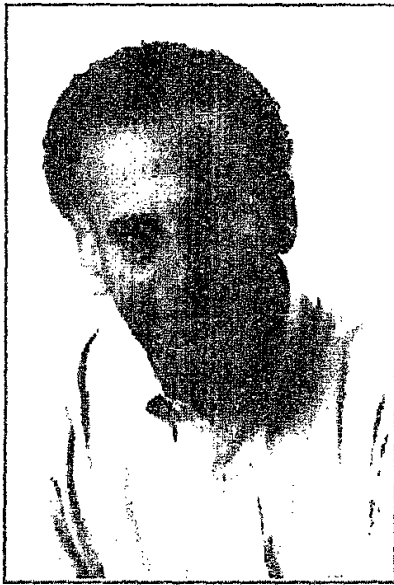
- Latest Flash Thermolysis
- disposable probes • complete privacy
- flexible hours • easy parking
- TV for children
- trained at New York Institute of Electrolysis

FOR MEN AND WOMEN

Call 358-4266

FOR FREE CONSULTATION

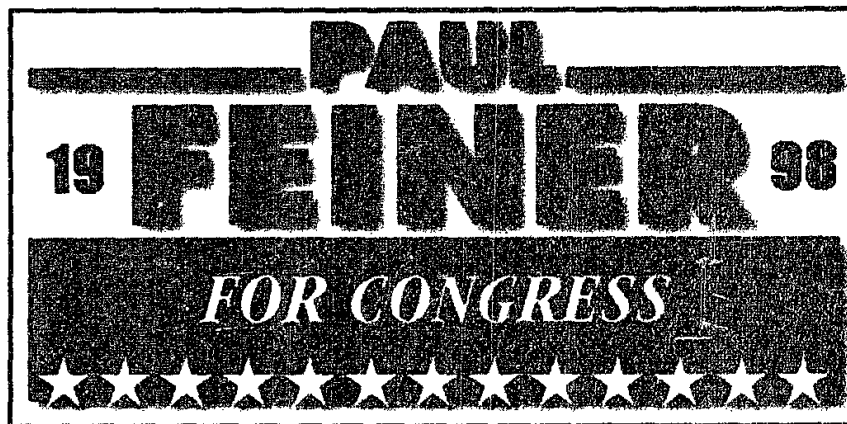




OFFICIAL 1998 CAMPAIGN WEBSITE
Paul Feiner, Independent Party Candidate for US
New York's 20th District

Website Launched: November 9, 1998

E-mail us your comments on what issues Paul Feiner should be focusing on.



Volunteering & Contribution

If you want to make a contribution, send a check payable to
"Paul Feiner for Congress" to the address below.
We deeply appreciate any contribution you can make.

Feiner for Congress
P.O. Box 718
Hartsdale, NY 10530

Phone: (914) 472-4236
Fax: (914) 472-4273

You can make a real difference by volunteering your help.
Click on Paul Feiner's e-mail address below and send us a letter
saying you want to help. We look forward to hearing from you.

feiner98@feiner.org

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FEDERAL ELECTION CAMPAIGN LAWS

Compiled by

THE
FEDERAL
ELECTION
COMMISSION



JUNE 1994

5010-104-70-65

didate for public office or to any person for any political purpose or use; or

(2) knowingly to solicit any such contribution from any such person for any such purpose during any such period.

(b) *Separate segregated funds.*

This section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any separate segregated fund by any corporation, labor organization, membership organization, cooperative, or corporation without capital stock for the purpose of influencing the nomination for election, or election, of any person to Federal office, unless the provisions of section 441b of this title prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, such fund. Each specific prohibition, allowance, and duty applicable to a corporation, labor organization, or separate segregated fund under section 441b of this title applies to a corporation, labor organization, or separate segregated fund to which this subsection applies.

(c) *"Labor organization" defined.*

For purposes of this section, the term "labor organization" has the meaning given it by section 441b(b)(1) of this title.

§ 441d. Publication and distribution of statements and solicitations; charge for newspaper or magazine space

(a) Whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication—

(1) if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee, or

(2) if paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee;

(3) if not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name of the person who paid for the communication and state

code of federal regulations

Federal Elections

11

Revised as of January 1, 1998

**CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT**

AS OF JANUARY 1, 1998

With Ancillaries

Published by
the Office of the Federal Register
National Archives and Records
Administration

as a Special Edition of
the Federal Register



Secretary of Labor. Each amount so increased shall be the amount in effect for that calendar year.

(2) For purposes of paragraph (c)(1) of this section, the term *price index* means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

(d) *Voting age population.* The Commission shall assure that there is annually published in the FEDERAL REGISTER an estimate of the voting age population based on an estimate of the voting age population of the United States, of each State, and of each congressional district. The term *voting age population* means resident population, 18 years of age or older.

PR 3866, Aug. 25, 1976

10 Expenditures by candidates.

(a) Except as provided in 11 CFR parts 9001, *et seq.*, and 9031, *et seq.*, candidates for Federal office may make unlimited expenditures from personal funds.

(b) For purposes of this section, *personal funds* means—

(1) Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either:

(i) Legal and rightful title, or

(ii) An equitable interest.

(2) Salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is the beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; proceeds from lotteries and similar legal games of chance.

(3) A candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or owner-

ship. If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate.

(1) PR 3866, Aug. 25, 1976, as amended at 48 FR 10271, Apr. 27, 1983

§ 110.11 Communications; advertising

(2 U.S.C. 441d).

(a)(1) *General rules.* Except as provided in paragraph (a)(6) of this section, whenever any person makes an expenditure for the purpose of financing a communication that expressly advocates the election or defeat of a clearly identified candidate, or that solicits any contribution, through any broadcasting station, newspaper, magazine, outdoor advertising facility, poster, yard sign, direct mailing or any other form of general public political advertising, a disclaimer meeting the requirements of paragraphs (a)(1) (1), (11), (14), (15) or (a)(2) of this section shall appear and be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice of the identity of persons who paid for and, where required, who authorized the communication.

(1) Such communication, including any solicitation, if paid for and authorized by a candidate, an authorized committee of a candidate, or its agent, shall clearly state that the communication has been paid for by the authorized political committee; or

(11) Such communication, including any solicitation, if authorized by a candidate, an authorized committee of a candidate or an agent thereof, but paid for by any other person, shall clearly state that the communication is paid for by such other person and is authorized by such candidate, authorized committee or agent; or

(111) Such communication, including any solicitation, if made on behalf of or in opposition to a candidate, but paid for by any other person and not authorized by a candidate, authorized committee of a candidate or its agent, shall clearly state that the communication has been paid for by such person and is not authorized by any candidate or candidate's committee.

(iv) For solicitations directed to the general public on behalf of a political

committees which is not an authorized committee of a candidate, such solicitation shall clearly state the full name of the person who paid for the communication.

(2) *Coordinated Party Expenditures.* (1) For a communication paid for by a party committee pursuant to 2 U.S.C. 441e(d), the disclaimer required by paragraph (a)(1) of this section shall identify the committee that makes the expenditure as the person who paid for the communication, regardless of whether the committee was acting in its own capacity or as the designated agent of another committee.

(11) A communication made by a party committee pursuant to 2 U.S.C. 441e(d) prior to the date the party's candidate is nominated shall satisfy the requirements of this section if it clearly states who paid for the communication.

(3) *Definition of "direct mailing."* For purposes of paragraph (a)(1) of this section only, direct mailing includes any number of substantially similar pieces of mail but does not include a mailing of one hundred pieces or less by any person.

(4) *Exempt Activities.* For purposes of paragraph (a)(1) of this section only, the term *expenditure* includes a communication by a candidate or party committee that qualifies as an exempt activity under 11 CFR 100.8(b)(10), (15), (17), or (18). Such communications, unless excepted under paragraph (a)(6) of this section, shall clearly state who paid for the communication but do not have to include an authorization statement.

(5) *Placement of Disclaimer.* The disclaimer specified in paragraph (a)(1) of this section shall be presented in a clear and conspicuous manner, to give the reader, observer or listener adequate notice of the identity of the person or committee that paid for, and, where required, that authorized the communication. A disclaimer is not clear and conspicuous if the printing is difficult to read or if the placement is easily overlooked.

(1) The disclaimer need not appear on the front or cover page of the communication as long as it appears within the communication, except on commun-

ications, such as billboards, that contain only a front face.

(11) Each communication that would require a disclaimer if distributed separately, that is included in a package of materials, must contain the required disclaimer.

(111) Disclaimers in a televised communication shall be considered clear and conspicuous if they appear in letters equal to or greater than four (4) percent of the vertical picture height that air for not less than four (4) seconds.

(6) *Exceptions.* The requirements of paragraph (a)(1) of this section do not apply to:

(1) Bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed;

(11) Skywriting, water towers, wearing apparel or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; or

(111) Checks, receipts and similar items of minimal value which do not contain a political message and which are used for purely administrative purposes.

(7) *Activities by separate segregated fund or its connected organization.* For purposes of paragraph (a)(1) of this section, whenever a separate segregated fund or its connected organization solicits contributions to the fund from those persons it may solicit under the applicable provisions of 11 CFR part 114, or makes a communication to those persons, such communication shall not be considered a form of general public political advertising and need not contain the disclaimer set forth in paragraph (a)(1) of this section.

(b)(1) No person who sells space in a newspaper or magazine to a candidate, an authorized committee of a candidate, or an agent of the candidate, for use in connection with the candidate's campaign for nomination or for election, shall charge an amount for the space which exceeds the comparable rate for the space for non-campaign purposes.

(3) For purposes of this section, *comparable rate* means the rate charged to a national or general rate advertiser, and shall include discount privileges

[¶ 6146] AO 1995-9 Solicitation of Contributions on the Internet

A nonconnected political committee's proposed use of the Internet, including a World Wide Web site, to distribute communications regarding Speaker Newt Gingrich and to solicit contributions constituted public political advertising. The materials available on the Internet included the requisite clear and conspicuous disclaimers.

In addition, the committee could use the Internet and related technology to accept contributions using credit cards, electronic funds transfers and other electronic means, provided recordkeeping and reporting requirements were met.

The committee's proposed sample of an on-line contributor response form for obtaining contributor information, along with its explanation that if a potential contributor failed to supply the requested information an immediate follow-up message would be sent, complied with the best efforts requirements.

Finally, in order to insure that contributions from prohibited sources were not made or accepted, the cautionary language had to be changed to reflect that the contributions were directed to the committee.

The committee was prohibited from using Mr. Gingrich's first or last name as part of its committee name, but could use those names as part of the project name for the operation of the World Wide Web site. Finally, the public posting of the list of contributors to Mr. Gingrich's campaign committee was permitted, but a cautionary statement regarding the statutory limitations on the use of those names should be included in the posting.

Answer to Matt Dorsey, Treasurer, NewtWatch PAC, 1837 16th Street, N.W., Washington, D.C. 20009.

[Advisory Opinion in Full Text]

This responds to your letter dated March 8, 1995, and supplementary materials received on March 24, requesting an advisory opinion on behalf of NewtWatch PAC ("the Committee") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to contributions to the Committee.

You state that the Committee's mission is to "provide a forum for publicly available information on selected public officials, most notably Speaker of the House Newt Gingrich" and that it "exists principally as a 'virtual PAC' on the World Wide Web." Anyone who has the necessary computer equipment can access the information the Committee provides through the Internet by using the uniform resource locator <http://www.cais.com/newtwatch/>. Materials available on the Committee's World Wide Web site about Speaker Gingrich include his voting record on selected issues, information about the Ethics Committee and FEC complaints, contribution data from political action committees and individuals, personal finances, honoraria, and his sponsorship of commemorative bills. The Committee filed a statement of organization on February 22, 1995.

You present several questions regarding the Committee's use of the Internet and the World Wide Web to solicit and accept contributions.¹

Question 1

You ask the Commission to confirm that the Committee's use of the Internet, specifically a World Wide Web site, to distribute its communications regarding Speaker Gingrich and to solicit contributions constitute general public political advertising under 11 CFR 110.11(a)(1).²

The term "general public political advertising" is not defined in the Act or Commission regulations, but may be applied on a case-by-case basis to forms of communication not specifically listed in 11 CFR 110.11. In recent years, there has been a rapid expansion of services available on the Internet, a sizable increase in the number of persons using it, increased ease of accessing the Internet, and a decline in the costs of hardware and software needed to do so. The Commission concludes that the combination of these factors means that use of the World Wide Web site operated by the Committee should be viewed as a form of general public political advertising under 11 CFR 110.11.

The materials available on the Committee's World Wide Web site on and after March 14, 1995 include the following disclaimer: "Paid for by NewtWatch and not authorized by any candidate or

¹ Because your committee is not the authorized committee of any presidential candidate, this advisory opinion does not address the separate and additional issues raised by 26 U.S.C. §§ 9031-9042 and related Commission regulations at 11 CFR Parts 9031-9039 regarding the use of the Internet by a presidential candidate to solicit or accept contributions.

² You also ask whether the use of the Internet constitutes political advertising in a general public communication under 11 CFR 100.7(b)(15)(i) and 100.7(b)(17)(i). These provisions are applicable only to state and local committee of political parties, and thus do not appear to be implicated by the activities of your committee.

candidate's committee." The Commission concludes that the wording of this disclaimer complies with 2 U.S.C. § 441d(a)(3) and 11 CFR 110.11(a)(1)(iv)(A).³

Disclaimers are located at the end of the home page⁴ and immediately following the request for contributor information. They are printed in the same size type as much of the body of the communication. Accordingly, the disclaimers are presented in a clear and conspicuous manner, as required by 11 CFR 110.11(a)(1).

Question 2

You ask whether the Committee may use the Internet, the World Wide Web and related technology to accept contributions "using credit cards, electronic fund transfers and potentially other electronic means." You state that you wish to use the service of First Virtual Holding Company ("FVHC"), a financial services company specifically created to enable on-line commerce via the Internet. Included in your request is part of the on-line information provided by FVHC to sellers and purchasers describing its services. Contributors would need to have accounts with FVHC and provide FVHC with their credit card number. Contributors then complete the Committee's solicitation form and provide their FVHC Account ID number (which is not the same as their credit card number). The Committee will then notify FVHC of the transaction. Before the transaction is actually processed, however, FVHC sends the contributor an e-mail message requesting confirmation of the transaction. The contributor has the option of either approving or disapproving the transaction. From time to time, the contributor's credit card would be billed for accrued charges and the Committee's checking account would be credited with payment.

The Commission has not previously considered this type of procedure. The Commission has, however, recognized that the Act and regulations allow lawful contributions to be made not only by personal check, but also in other ways, including properly documented use of contributors' credit cards (Advisory Opinions 1978-68 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 5357] and 1984-45 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 5786]), automatic fund transfers from contributors' bank accounts to a committee account (Advisory Opinion 1989-26 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 5974]) and telephone calls to 900 line services (Advisory Opinions 1991-20 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 6027] and 1990-1 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 5980]). The situation you present involves the use of credit cards and appears to be very similar to these situations. Accordingly, the Commission concludes that nothing in the Act or Commission regulations precludes the implementation of your proposed contribution system, provided the recordkeeping and reporting requirements described below are followed.

Under Commission regulations, a contribution is considered "made" when the contributor relinquishes control. 11 CFR 110.1(b)(6). In the situation you propose, the Commission would view the date the contributor sends the electronic confirmation to FVHC as the date the contribution is made. This situation is similar to the transactions presented in Advisory Opinion 1990-4 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 5983]. The date your committee receives the contribution will be the date on which the Committee receives notice that the contributor has confirmed the charge to his or her FVHC account.

The expenses incurred by FVHC, which is a corporation, in providing services facilitating this program would be a prohibited contribution by FVHC if uncompensated. 2 U.S.C. § 441b(a); 11 CFR 114.2(b). You state that FVHC charges a 2% commission on all transactions, and that the Committee intends to pay and report this normal and customary commission as an operating expenditure pursuant to 11 CFR 104.3(b)(1)(i) and (3)(i). In a subsequent communication, you provided materials indicating that FVHC also charges a \$10 registration fee, a 29-cent fee per transaction, and a \$1 processing fee each time a payment is made by FVHC to your account.

The Commission concludes that these amounts are operating expenditures of the Committee and are reportable by it pursuant to the Act. 2 U.S.C. § § 432(c)(5) and 434(b)(5)(A); 11 CFR 102.9(b) and 104.3(b)(3) and (4). The 2% charge, and the other fees to be paid by the Committee, appear to be the usual and normal charge for the services to be provided by FVHC. 11 CFR 100.7(a)(1)(iii)(A). See Advisory Opinions 1989-26 and 1978-68. Note that the Committee must treat the full amount of donor's contribution as the contributed amount for purposes of the limits and reporting provisions of the Act, even though the Committee will receive a lesser amount because of FVHC's fees.

Your request recognizes your obligation to comply with the recordkeeping and reporting requirements of the Act. 2 U.S.C. § § 432 and 434. The documentation required under 2 U.S.C. § 432(c) and

³ The materials attached to your advisory opinion request included a different formulation of the disclaimer, which does not need to be addressed given that the previous disclaimer was updated as of March 14th.

⁴ A home page is the first page a user will see when accessing a particular World Wide Web site. It functions as a combination of an introduction, a table of contents and advertisement for the Web site.

regulation sections 102.9 and 104.14 must be preserved and available for audit, inspection or examination by the Commission for at least three years after the filing of the report to which the documentation relates. See 2 U.S.C. § 432(d) and 11 CFR 102.9(c) and 104.14(b)(3).

When applying the requirements of these regulations, the Commission has previously permitted the maintenance of certain types of committee records in non-paper form. See Advisory Opinions 1994-40 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 6136] and 1993-4 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 6086]. Electronic transactions of this nature must entail the creation and maintenance of a complete and reliable "paper trail" for recordkeeping, disclosure and audit purposes. In addition to the records FVHC will provide to you regarding contributions, you have indicated in a subsequent communication that the contributor information, confirmation records and attestations (see discussion below) will be sent electronically to a computer file containing a log of contributor data.⁵ The Committee should take steps to ensure that the contributor data is backed up in a form that enables the Committee to maintain either machine readable or paper copies of these records for three years after the date on which it reports the contributions.

Question 3

You ask whether the Committee, using the Internet and related technology, can adequately ensure that it makes best efforts to obtain, maintain and submit contributor information required by the Act. This includes the name and address of any individual whose previous contributions to the Committee in the same calendar year aggregate over \$200, together with the date and full amount of the individual's contribution, as well as his or her occupation and employer. 2 U.S.C. § 432(c)(1) and (c)(3) and 434(b)(3)(A); 11 CFR 102.9(a)(2) and 104.3(a)(4)(i). For contributions in excess of \$50 that aggregate to \$200 or less for the calendar year, a record of the same information must be kept minus the occupation and employer's name. 2 U.S.C. § 432(c)(2) and 11 CFR 102.9(a)(1). See Advisory Opinion 1980-99 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 5550] with respect to contributions of \$50 or less.

You have provided a sample of the on-line contributor response form you propose to use to obtain this information. You explain that if a potential contributor fails to supply this information, he or she will receive an immediate message asking again for the information.⁶

The Commission notes that 11 CFR 104.7(b)(2) requires you to make one oral or written follow-up attempt to obtain the information for any contribution you receive that exceeds \$200 and lacks the contributor's identification. The request must be made no later than thirty days after the Committee receives the contribution. In the unique situation you present, the follow-up request may consist of an electronic message sent to the contributor's E-mail address. However, such request must be made after the committee receives notice of the donor's confirmation and must meet the specific requirements of 11 CFR 104.7(b)(2). Accordingly, if the above steps are taken, your method would appear to satisfy the Act's recordkeeping and reporting requirements.

Question 4

Your request raises a question as to whether you can adequately ensure that contributions from prohibited sources are not made or accepted, given the unique global nature of the Internet and the unrestricted access to your World Wide Web site. You have described in detail the methods you intend to employ to safeguard against the receipt of excessive contributions, contributions in the name of another, and contributions from corporations, labor organizations, national banks, federal government contractors and foreign nationals, which are prohibited by the Act. 2 U.S.C. §§ 441b, 441f, 441e, and 441a(a)(1)(A). The sample solicitation materials you submitted include a form on which contributors are asked to attest that they are making the contribution from their own funds and not those of another. They are also asked to attest that the contribution is not from the general treasury funds of a corporation, labor organization or national bank. The sample form also requests attestations that contributors are not Federal government contractors and are not foreign nationals who lack permanent resident status in the United States.

You have also included samples of the on-line responses would-be contributors will receive if any of these boxes are checked "no" or left blank. The proposed responses state in large type: "Sorry, Federal law prevents us from accepting contributions from a foreign national who lacks permanent resident status in the United States;" "Sorry, Federal law prevents us from accepting contributions from a Federal government contractor;" "Sorry, Federal law prevents us from accepting contributions from

⁵The "server" is a computer that stores and distributes the pages for a particular World Wide Web site. It also records the contributor data to

applies to the FVHC identification number rather than the occupation and employer information.

⁶The Commission suggests that you modify the reference "(Required for First virtual)" so as to make clear that it

general treasury funds of a corporation, labor organization or national bank;" and "Sorry, Federal law prevents us from accepting contributions from funds other than those of the donor." In smaller type, each of these responses to potential contributors also says "If you think you may have filled out the contribution form incorrectly you should try again."

The following cautionary language should be substituted instead of your proposed language, to let potential contributors know that the Act may affect not only the ability of the Committee to accept their contributions, but also their ability to contribute: "Sorry, Federal law prohibits foreign nationals who lack permanent residence status from contributing to NewtWatch;"⁷ "Sorry, Federal law prohibits corporations, labor organizations or national banks from contributing general treasury funds to NewtWatch;" "Sorry, Federal law prohibits any person from contributing another person's funds to NewtWatch;" and "Sorry, Federal law prohibits government contractors from contributing to NewtWatch."

The Commission notes that the Committee may receive responses to its solicitation from minor children (persons under 18 years of age) who have access to the Internet and the Committee's World Wide Web site. The Committee may accept these contributions if the minor makes the decision to contribute knowingly and voluntarily, and the child contributes his or her own funds, and the contribution is not controlled by another individual or made from the proceeds of a gift given to provide funds to be contributed. 11 CFR 110.1(i)(2). Accordingly, to ensure that contributions from minors meet these standards, you should revise your attestation to inform potential contributors of these requirements.

Other Issues

A. Committee and Project Names

You state that as Treasurer of the Committee it is your intention to fully comply with the Act and regulations. The Commission notes that the following issues are also raised by your proposed activity.

First, the Committee, which is not the authorized committee of any candidate, and the World Wide Web site are both named "NewtWatch." Reports filed by Speaker Gingrich's authorized committee, Friends of Newt Gingrich, show that the Speaker's authorized committee received over \$5000 in contributions after the 1994 general election and reported no debts or obligations, thereby qualifying him as a candidate for 1996. 2 U.S.C. § 431(2).

The Act and Commission regulations prohibit an unauthorized committee from including the name of any candidate in its committee name. 2 U.S.C. § 432(e)(4); 11 CFR 102.14(a). This restriction applies to the use of a candidate's first name where the first name clearly conveys the identity of the candidate. *See, Buckley v. Valeo* [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 9001], 424 U.S. 1, 43 fn. 51 (1976) (candidate is clearly identified where his or her name, nickname, initials, photograph, or other unambiguous reference appear as part of a communication). The Commission concludes that the term "NewtWatch" may not be used as part of the Committee's name.

In contrast to the committee name restrictions, a candidate's name may be used in the title of a special project operated by an unauthorized committee if the project title clearly and unambiguously shows opposition to the named candidate. 11 CFR 102.14(b)(3). The operation of a World Wide Web site would be considered a project of the Committee. Here, the Commission notes that under the regulations, phrases showing clear and unambiguous opposition to a candidate are not limited to specific words such as "defeat" or "oppose." The use of the term "watch," when coupled with a candidate's name, conveys clear and unambiguous opposition to the candidate being watched. "NewtWatch" connotes your view that Speaker Gingrich needs to be kept under careful and constant close scrutiny, and your view that users need to be on the alert or to be on their guard with respect to Speaker Gingrich. Accordingly, the Act and Commission regulations do not prohibit the Committee from using the name "NewtWatch" as a project name.

B. Use of FEC Contributor Data

⁷ As discussed below, a revised committee name should be substituted for the name "NewtWatch."

Second, a perusal of the materials available through the World Wide Web site includes lists of contributors who gave \$200 or more to Speaker Gingrich's authorized committee. These lists include the contributors' cities and states but do not include their street addresses or telephone numbers. The lists are preceded by the statement, "While FEC data is public information, use of this data for fundraising purposes is prohibited by federal law."

The Act requires the Commission to make available for public inspection and copying committee reports containing the name and mailing address of individual contributors giving over \$200 per calendar year. The Act further provides that "any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee." 2 U.S.C. § 438(a)(4).

Based on the legislative history of the Act, the Commission has previously stated that the principal purpose of restricting the sale or use of information copied from reports is to protect individual contributors from having their names sold or used for commercial purposes. See Advisory Opinions 1995-5 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 6140], 1989-19 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 5966], 1984-2 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 5748] and 1980-101 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 5551]. The sponsor of the amendment creating this restriction stated that the purpose was the protection of the privacy of the "very public-spirited citizens" who make contributions to campaigns. 117 Cong. Rec. 30057-58 (1971) (remarks of Senator Bellmon). In *Federal Election Commission v. Political Contributions Data, Inc.* [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶ 9305], 943 F.2d 190 (2d Cir. 1991) ("FEC v. PCD"), the Second Circuit concluded that where a similar list lacked mailing addresses and phone numbers, and contained a caveat against solicitation and commercial use, there is little risk, if any, of solicitation or harassment of contributors. The court stated that it was "virtually certain that these reports will be used for informative purposes (similar to newspapers, magazines, and books . . .)."

The Commission concludes that the inclusion of the lists of contributors to the Friends of Newt Gingrich committee does not violate 2 U.S.C. § 438(a)(4). The lists do not appear to contain sufficient information to generate solicitations to Speaker Gingrich's contributors. Moreover, the public posting of contributor information on the World Wide Web site appears similar to the situation in *FEC v. PCD*.

Nevertheless, the Commission cautions you that the statement you include in the communications available on the World Wide Web site should be amended to reflect that the statutory prohibition applies to the sale or use of contributors' names copied from FEC reports for commercial purposes, as well as sale or use for purposes of soliciting contributions.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. § 437f.

Dated: April 21, 1995.