

BEFORE THE FEDERAL ELECTION COMMISSION

Federal Election Commission
of the United States

v.

Udall For Us All Committee
FEC ID Number C00329896

Attorney General Tom Udall

South Bay Voter Registration

This case is to
be designated
Matter Under
Review # 4845

Oct. 28, 1998

COMPLAINT

The Republican Party of New Mexico ("RPNM"), by and through its Chairman, John Dendahl, brings this complaint pursuant to 2 U.S.C. § 437g(a)(1). The Republican Party of New Mexico may be reached at 2901 Juan Tabo NE, Suite 116, Albuquerque, NM 87112.

I. SUMMARY

On October 22, 1998, RPNM filed a complaint against Attorney General Tom Udall. That complaint was based on Udall's own disclosure filings, which his assistant treasurer certified she had examined and were "true, correct and complete . . . to the best of [her] knowledge and belief." Udall subsequently submitted amended reports, blaming software glitches and computer error for what had been reported as almost \$500,000 in illegal fund-raising.

This complaint addresses ongoing illegalities that were not cured by Udall's amended reports. Udall continues to keep and will soon spend up to \$19,021.63 in contributions that were illegally received. When asked about his intention to comply with the law and refund these illegal receipts at a candidate debate, Udall defiantly thundered "Absolutely not!" Federal law demands more, and the Commission should require Udall to adhere to the same laws as every other federal candidate.

1. Udall Accepted An Excessive Contribution from an Unregistered Organization.

Udall reported receipt of \$5,000 from the "South Bay Voter Registration" PAC on September 23, 1998, both on his original defective filing and on his amended report. This organization is not registered with the Federal Election Commission as a multicandidate PAC. In fact, this organization is not registered with the FEC at all, but rather with California's Fair Political Practices Commission. This PAC raised its funds under California law, which permits such PAC to accept corporate contributions. Under federal law, unregistered organizations are limited to contributions of \$1,000 per election, and they can only donate federally permissible funds. 2 U.S.C. § 441a(a)(1)(A). The Commission has also made clear that a candidate who accepts contributions from unregistered organizations which are not

political committees under the Act must assume responsibility for determining that the contribution originally came from permissible sources. See FEC Advisory Opinion 1982-38. Udall must refund at least \$4,000 to this unregistered organization -- \$5,000 if the group cannot establish that it contributed only federally permissible funds.

2. Udall Accepted Excessive "Debt Retirement" Contributions. Under the Federal Election Campaign Act (the "Act"), federal candidates can only accept contributions for elections in advance of those elections. 11 C.F.R. § 110.1(b)(3)(i). Contributions may not be applied towards prior elections or election cycles unless the campaign has "net debts outstanding" from the prior election. Id.

Udall originally reported "0" in debts as of June 30, but later amended his report to show \$30,000 in debts. He blamed the initial omission on software, whose selfless (or inept) manufacturer apparently agrees "that this error is common when using their product." See Udall Committee Oct. 23, 1998 Letter to FEC. Udall did not report any outstanding primary debts or bills in his amended report other than the \$30,000 loan from himself and Jill Cooper.

As it turns out, however, Udall had less than \$30,000 in net debts outstanding from the primary election. On July 29, 1998 Udall received a media refund of \$14,025 from Seder Laguens Hamburger relating to the primary election. And on September 23, 1998 Udall received a further \$2,946.63 in refunds from Media Strategies Media Fund. After these media refunds -- which Udall reports were for the primary -- **Udall's primary debt was only \$13,028.37.**

From July 1 through October 22, Udall reports receiving \$28,050 in debt retirement contributions. See Attached Chart #1. On September 12, 1998, in fact, Udall had totally extinguished his primary debts, yet he still took \$15,021.63 more for the primary. See Attached Chart #2. Udall thus accepted and continues to accept debt retirement contributions even though he has not carried any net debt since September 12. In its Explanation and Justification of this debt retirement regulation, the Commission declared:

Campaign committees may retain and use designated post-election contributions so long as they have net debts outstanding from the election at the time the contributions are received. Once a committee's net debts have been extinguished, any contributions designated to pay those debts must be returned, refunded, redesignated, or reattributed. If a campaign committee receives several contributions on the same date, which exceed the amount needed to retire its net debts, the committee may choose either to accept a proportionate amount of each contribution or to accept some contributions in full and return, refund, or seek redesignation or reattribution of others.

Federal Register, Jan. 9, 1987 at 240.

Udall accepted \$15,021.63 more for debt retirement than is permitted under the law. See Attached Charts. And he continues to violate federal campaign finance laws by soliciting and receiving debt retirement contributions as late as October 22, 1998. See Henley 48 Hour Notice unlawful designation to "primary debt." These excessive donations must be refunded.

See MUR 3452 (Durant for US Senate fined \$22,000 for receiving excessive contributions and failing to redesignate them within 60 days); see also MUR 3803 (Geraldine Ferraro's campaign fined for failing to redesignate contributions within 60 days among other violations).

IV. PRAYER FOR RELIEF

Even after he fixed his computer software problems and amended his deficient reporting statements, Tom Udall continues to accept, maintain and spend illegal contributions. His debt retirement receipts accepted after his net debts were extinguished do not comply with the Federal Election Campaign Act and must be refunded. But Udall has stated that he does "absolutely not" intend to comply with the law before Tuesday's election by returning these illegal receipts. The Commission should take Udall's refusal to comply with the law in a timely fashion into account when determining the appropriate penalty for his malfeasance.

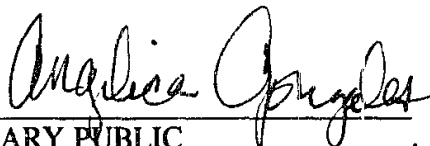
Respectfully Submitted,



John Dendahl
Chairman

State of New Mexico

Signed and sworn to before me
this 28th day of October, 1998.



NOTARY PUBLIC

My commission expires: Feb. 17, 2001

DATE REC'D	DEBT	Donor	Reported As
30-Jun-98	\$ 30,000.00	Tom Udall & Jill Cooper	Primary Debts Outstanding
5-Jul-98	\$ (500.00)	Alida Messinger (NY)	Debt retirement contribution
5-Jul-98	\$ (500.00)	Sandra Ferry (NY)	Debt retirement contribution
21-Jul-98	\$ (1,000.00)	Jacqueline Hoefer (NM)	Debt retirement contribution
29-Jul-98	\$ (14,025.00)	Seder Laguens Hamburger	Refund of media buy
20-Aug-98	\$ (5,000.00)	AFSCME (DC)	Debt retirement contribution
31-Aug-98	\$ (1,000.00)	Brook Glaefke (MN)	Debt retirement contribution
7-Sep-98	\$ (5,000.00)	IBEW-COPE (DC)	Debt retirement contribution
12-Sep-98	\$ (2,975.00)	DRIVE (DC)	Debt retirement contribution

**NET DEBTS RETIRED
NO NET DEBTS OUTSTANDING**

12-Sep-98	\$ (2,025.00)	DRIVE (DC)	Debt retirement contribution
17-Sep-98	\$ (1,000.00)	Marion Noel (TX)	Debt retirement contribution
17-Sep-98	\$ (500.00)	Georgia Webster (TX)	Debt retirement contribution
23-Sep-98	\$ (2,946.63)	Media Strategies Media Fund	Refund of media buy
24-Sep-98	\$ (1,000.00)	Don Henley (CA)	Debt retirement contribution
24-Sep-98	\$ (1,000.00)	Sharon Henley (CA)	Debt retirement contribution
2-Oct-98	\$ (1,000.00)	Wendy Rockefeller (NY)	Debt retirement contribution
4-Oct-98	\$ (550.00)	Lynn Udall	Debt retirement contribution
6-Oct-98	\$ (2,500.00)	Nat'l Cmte for an Effective Cong. (DC)	Debt retirement contribution
13-Oct-98	\$ (500.00)	George E. Coleman (NM)	Debt retirement contribution
17-Oct-98	\$ (1,000.00)	Roger Friedman (NY)	Debt retirement contribution
22-Oct-98	\$ (1,000.00)	Hughline Henley (TX)	Debt retirement contribution
ILLEGAL	\$ (15,021.63)	CLEARLY ILLEGAL RECEIPTS	ILLEGAL

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13-Oct-98	\$ (500.00)	George E. Coleman (NM)	Debt retirement contribution
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22-Oct-98	\$ (1,000.00)	Hughline Henley (TX)	Debt retirement contribution
TOTAL	\$ (15,021.63)	TOTAL ILLEGAL RECEIPTS IN EXCESS OF PRIMARY DEBTS	