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November 2, 1998

MUR 4855

Via Overnight Mail

**Federal Elections Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463**

**Re: Michael Bradley Burkhold, Jr.; Committee to Elect Mike Burkhold to
Congress (FEC Identification No. C00328310)**

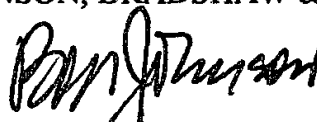
Dear Sir or Madam:

Enclosed for filing are the original and three (3) copies of a Complaint against the above-named Respondents, initiated today by Complainant the Spratt for Congress Committee. We have included herein citations to relevant authority. The Complainant has listed a number of areas of serious concern, which we trust the Commission will investigate promptly and fully.

Thank you very much.

Sincerely yours,

ROBINSON, BRADSHAW & HINSON, P.A.



Benjamin A. Johnson

**BAJ/dsv
Enclosures**

**BEFORE THE FEDERAL
ELECTION COMMISSION**

In re:

**MICHAEL BRADLEY BURKHOLD, JR.
and THE COMMITTEE TO ELECT
MIKE BURKHOLD TO CONGRESS
(FEC Identification No. C00328310),**

Respondents.

COMPLAINT

MUR 4855

The undersigned counsel for Complainant, Spratt for Congress Committee (FEC Identification No. C00155796), files this Complaint charging violations of the Federal Election Campaign Act of 1971, 2 U.S.C. §§ 431, *et seq.*, as amended (the "Act"), and related regulations of the Federal Election Commission ("FEC"), 11 CFR §§ 100.1, *et seq.*, by Michael Bradley Burkhold, Jr., a candidate for the United States Congress in the Fifth Congressional District of South Carolina, and The Committee to Elect Mike Burkhold to Congress (FEC Identification No. C00328310) (together, the "Respondents").

Allegations of Complaint

There is probable cause to believe that Respondents have violated and are violating the accounting, reporting, and other legal requirements of the Act. The disclosures filed by the Respondents as of October 25, 1998 are defective and incomplete in the following particulars:

Improper Loans by the Candidate

1. In his Financial Disclosure Statements filed with the United States House of Representatives in December 1997 and May 1998 (the "Financial Disclosure Statements"), Mr. Burkhold listed as his sole substantial asset an interest in Zeus Mediterranean Foods, a limited liability company. Such interest is valued between \$100,000 and \$250,000 on the December 1997 Disclosure Statement and between \$250,000 and \$500,000 on the May 1998 Disclosure Statement. The Financial Disclosure Statements declare that no dividends are associated with Mr. Burkhold's interest in Zeus Mediterranean Foods. No other substantial assets are listed on the Financial Disclosure Statements.

2. The December 1997 Financial Disclosure Statement reports Mr. Burkhold's earned income as \$46,838 (as of the date of filing). The May 1998 Financial Disclosure Statement reports Mr. Burkhold's earned income as \$12,349 (as of the date of filing).

3. On March 31, 1998, Mr. Burkhold reported a loan of \$30,000 to his campaign from his own "personal funds" (the "March Loan"). April 15, 1998 Quarterly Report, page 1, line 13a. On April 1, 1998, Mr. Burkhold reported that he repaid this \$30,000 loan to himself (within 24 hours of making it). 1998 Pre-Primary Report, page 1, line 19a.

4. On May 20, 1998, Mr. Burkhold again reported a loan of \$30,000 to his campaign from his own "personal funds" (the "May Loan"). 1998 Pre-Primary Report, Schedule C. On May 22, 1998, Mr. Burkhold reported that he repaid this \$30,000 loan to

himself (this time within 48 hours of making the loan). July 15, 1998 Quarterly Report, page 1, line 19a.

5. On June 30, 1998, Mr. Burkhold reported a loan of \$33,000 to his campaign from his own "personal funds" (the "June Loan"). July 15, 1998 Quarterly Report, Schedule C.

6. The Financial Disclosure Statements do not indicate any possible source for the March Loan, the May Loan, or the June Loan (collectively, the "Loans"), other than Mr. Burkhold's interest in Zeus Mediterranean Foods. In July 1998, Respondents reported that the Loans came from the "nest egg" of Mr. Burkhold and his wife. *The Charlotte Observer*, July 15, 1998. No such "nest egg" was listed on the Financial Disclosure Statements, however. Respondents later reported that the Loans were made by Zeus Mediterranean Foods. *The Charlotte Observer*, July 15, 1998. Upon information and belief, however, Zeus Mediterranean Foods is a multi-member limited liability company that is prohibited from contributing or lending in excess of \$1,000 per election to a candidate for federal office, assuming that it is even eligible to contribute or lend at all. See 2 U.S.C. § 441a(a)(1)(A) (establishing legal limits on campaign contributions); FEC Advisory Opinion 1998-15 (discussing the legality of contributions by limited liability companies). Accordingly, it would seem that Mr. Burkhold: (i) failed to disclose substantial assets on the Financial Disclosure Statements (from which the Loans were made); (ii) failed to report loans to himself (that could have served as the source of the Loans to his campaign); or (iii) reported Loans to his campaign that were never actually made. All three courses of conduct violate federal law and FEC

regulations. See 2 U.S.C. § 434(b)(3)(A) (requiring that receipts to campaigns be reported accurately); 5 U.S.C. app. § 102 (requiring that assets and income be reported accurately to the federal government on financial disclosure statements); 11 C.F.R. § 104.3(d) (requiring debts and obligations of candidates and committees to be fully and accurately reported).

7. In their October 15, 1998 Quarterly Report, Respondents claimed that the June Loan was repaid. The date of repayment has never been disclosed, however. This information is required by FEC regulations and federal law. See 11 C.F.R. § 104.3(b)(4)(iii).

Failure to Heed the Reporting Requirements of 11 CFR § 104.3

8. FEC regulations require that individual donors who give more than two hundred dollars in a calendar year be identified by name, address, occupation and employer. 11 CFR § 104.3(a)(4)(i) ("Regulation 104.3").

9. None of the reports filed by Respondents during the 1998 calendar year fully complies with Regulation 104.3. In fact, Respondents' compliance with Regulation 104.3 has become increasingly more sporadic as the year has progressed. Specifically:

- (a) In their April 15, 1998 Quarterly Report, Respondents failed to provide the information required by Regulation 104.3 for 4% of 82 itemized contributors.
- (b) In their Pre-Primary Report, Respondents failed to provide the information required by Regulation 104.3 for 10% of 44 itemized contributors.

- (c) In their July 15, 1998 Quarterly Report, Respondents failed to provide the information required by Regulation 104.3 for 30% of 62 itemized contributors.
- (d) In their October 15, 1998 Quarterly Report, Respondents failed to provide the information required by Regulation 104.3 for 32% of 102 itemized contributors.
- (e) In their 1998 Pre-General Report, Respondents failed to provide the information required by Regulation 104.3 for 100% of 10 itemized contributors.

10. Respondents have failed to provide the information required by Regulation 104.3 despite repeated admonitions from the FEC. By letters dated August 11, 1998, September 3, 1998, and October 27, 1998, the FEC instructed Respondents to provide the information required by Regulation 104.3 for the contributors to Respondents' campaign. Respondents' failure to provide such information indicates not simply an ignorance of FEC guidelines, but defiance of the agency's authority.

Failure to Exercise "Best Efforts" under 11 C.F.R. § 104.7

11. FEC Regulation 11 CFR § 104.7 requires federal candidates and their campaigns to use "best efforts" to obtain the information requested by Regulation 104.3. Respondents have claimed that they have exercised their best efforts to secure such information, yet there is no evidence that such efforts were genuine and diligent. Indeed, Respondents' claims are belied by the names of some of the donors listed on

Respondents' reports, several of whom are well-known businessmen who live in the same community as Mr. Burkhold. Specifically:

- (a) No medical practice is listed for Dr. Donald McQueen, a well-known physician from Rock Hill, on Respondent's 1998 Pre-General Report. The absence of this information is puzzling, since Dr. McQueen was completely identified on Respondents' July 15, 1998 Quarterly Report.
- (b) Mr. H.K. Snipes, a well-known local businessman who owns the largest scrap metal business in three counties, lives only blocks from Mr. Burkhold. Respondents claimed that they exercised their "best efforts" to secure Mr. Snipes' employer and occupation, yet such information is not provided. October 15, 1998 Quarterly Report, Schedule A.
- (c) No employer or occupation is listed for L.J. Whitfill, a \$1,000 donor from Rock Hill. October 15, 1998 Quarterly Report.
- (d) Dr. Randolph Rodrigue, a \$1,000 donor from Rock Hill, is completely identified on Respondents' April 15, 1998 Quarterly Report. On the October 15, 1998 Quarterly Report, however, Dr. Rodrigue's employer is unlisted.
- (e) No employer or occupation is listed for Robert or Stephanie Brewer, a Rock Hill couple who gave a total of \$3,000 to Mr. Burkhold's campaign. July 15, 1998 Quarterly Report.

12. By letter to the FEC dated September 27, 1998, Mr. Dan Thompson, Assistant Treasurer for the Committee to Elect Mike Burkhold to Congress, claimed that

the Committee was seeking to use a computer software program that would allow it to comply with the "best efforts" requirement of 11 CFR § 104.7. To date, however, Respondents have persisted in failing to provide the information required by Regulation 104.3. Their claims that they have exercised their "best efforts" to secure this information are inherently incredible.

Summary

13. Respondents have repeatedly flouted and ignored the strict reporting and accounting requirements of the FEC. They have failed completely to describe their campaign contributors and have demonstrated no efforts to secure information regarding such contributors. These failures have not simply persisted as the year has progressed; rather, they have become increasingly more egregious. Respondents have neither claimed nor proven that the information required of them is difficult to locate. Indeed, some of the contributors for whom descriptions are incomplete are Mr. Burkhold's close neighbors.

14. More alarming than Respondents' failure to describe their campaign contributors is their failure to identify their funding sources. The Financial Disclosure Statements filed by Respondents, together with Mr. Burkhold's own statements to the press, make it clear that Respondents (i) have failed to disclose substantial assets; (ii) have failed to report loans to Mr. Burkhold or to his campaign; or (iii) have inflated their fundraising totals with illusory or nonexistent loans. Such manipulation of the FEC's disclosure requirements violates the letter and the spirit of federal campaign finance laws.

Request for Relief

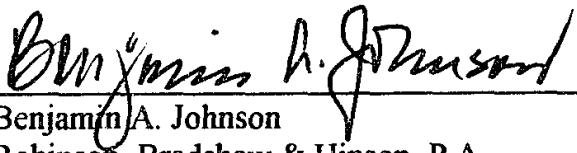
In response to the foregoing, the Complainant requests that the FEC take all necessary steps to ensure that the activities of Respondents have been conducted in compliance with the Act and with FEC regulations and that the public record accurately reflects the status of Respondents' campaign accounts.

More specifically, the Complainant requests that the FEC:

1. Conduct a prompt and immediate investigation, including an audit, of the facts stated in this Complaint. A full investigation and audit would include interviews with Mr. Terry G. Livingston, Mr. Burkhold's campaign treasurer until May 20, 1998; and Mr. Hulic Ratterree, Mr. Burkhold's current treasurer; and

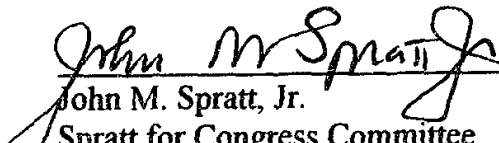
2. Take immediate steps to remedy the violations alleged in this Complaint, including, to the extent appropriate, use its authority under 2 U.S.C. § 437g(a)(6)(A) to seek a restraining order enjoining the respondents from future violations of federal campaign law.

Respectfully submitted this 2nd day of November, 1998.


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The Guardian Building
One Law Place - Suite 600
Post Office Drawer 12070
Rock Hill, South Carolina 29731
803/325-2900

Attorney for Spratt for Congress Committee

I have reviewed the Complaint to be filed on behalf of my campaign and declare under oath that the factual allegations are true, to the best of my information and belief.


John M. Spratt, Jr.
Spratt for Congress Committee
Post Office Box 830
York, South Carolina 29745

Sworn to and subscribed
before me, this 2nd day of
November, 1998.


Notary Public

My commission expires:

7/2000
(Official Seal)