FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 4940
DATE COMPLAINT FILED: October 26, 1999
DATE OF NOTIFICATION: November 2, 1999
DATE ACTIVATED: March 20, 2000

EXPIRATION OF STATUE OF
LIMITATIONS: October 14, 2003
STAFF MEMBER: Tony Buckley

COMPLAINANT: Steven J. Law, Executive Director
National Republican Senatorial Committee

RESPONDENTS: Campaign for America
and Eileen Capone, its treasurer
Jerome Kohlberg
Douglas C. Berman

RELEVANT STATUTES:
2 U.S.C. § 431(4)
2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 431(9)(A)(i)
2 U.S.C. § 433
2 U.S.C. § 434
2 U.S.C. § 434(c)(1)
2 U.S.C. § 441a(a)(1)(C)
2 U.S.C. § 441a(f)
2 U.S.C. § 441d(a)(3)
11 C.F.R. § 100.8(a)(2)
11 C.F.R. § 104.4(c)(2)
11 C.F.R. § 109.2
11 C.F.R. § 109.2(a)(2)
11 C.F.R. § 109.2(b)
11 C.F.R. § 114.2(b)
11 C.F.R. § 114.10(c)(1)
11 C.F.R. § 114.10(c)(2)
11 C.F.R. § 114.10(c)(3)
11 C.F.R. § 114.10(c)(4)
11 C.F.R. § 114.10(c)(5)
11 C.F.R. § 114.11(e)(1)
11 C.F.R. § 114.11(e)(2)

11 C.F.R. § 114.11(e)(1)(i)
11 C.F.R. § 114.11(e)(1)(ii)
11 C.F.R. § 114.11(e)(2)
11 C.F.R. § 114.11(g)

INTERNAL REPORTS CHECKED: FEC Form 5

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was initiated by a complaint filed on October 26, 1999 by Steven J. Law, Executive Director of the National Republican Senatorial Committee. Complainant alleges that Campaign For America ("CFA") made over $466,000 in independent expenditures prior to the 1998 general election, and that, as a result, CFA should have registered with the Commission as a political committee and filed reports of receipts and disbursements. Complainant further alleges that, as a result of CFA achieving committee status, Jerome Kohlberg, CFA's major source of funding, has made, and CFA has accepted, excessive contributions. Complainant further argues that CFA misreported the amount and date of Mr. Kohlberg's contribution in public filings, and that CFA may have misreported the date of its expenditure. Complainant also alleges that CFA's advertising contained an improper disclaimer.

Respondents were notified of the complaint on November 2, 1999. A joint response disputing the contentions in the Complaint was submitted on behalf of all Respondents (CFA; its treasurer, Eileen Capone; its former president, Douglas Berman; and Jerome Kohlberg) on December 9, 1999.

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

Pursuant to the Federal Election Campaign Act of 1971, as amended ("the Act"), an expenditure is generally defined as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i).[1] Pursuant to 11 C.F.R. § 100.8(a)(2), "[a] written contract, including a media contract, promise or agreement to make an expenditure is an expenditure as of the date such contract, promise or obligation is made." An independent expenditure is "an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate." 2 U.S.C. § 431(17). The term "clearly identified" means, *inter alia*, that the name of the candidate involved appears. 2 U.S.C. § 431(18)(A). Pursuant to 11 C.F.R. § 100.22,

> Expressly advocating means any communication that –
>
> (a) uses phrases such as "vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '94," "vote Pro-Life," or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as

[1] Similarly, a contribution is any "gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i).

> posters or bumper stickers, advertisements, etc. which say "Nixon's the One," "Carter '76", "Reagan/Bush," or "Mondale!"; or
>
> (b) When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because-
>
> (1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and
>
> (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.[2]

The Act defines a political committee as "any committee, club, association, or other group of persons which receives contributions or makes expenditures aggregating in excess of $1,000 during a calendar year." 2 U.S.C. § 431(4)(A). For the purposes of the Act, the term "person" is defined as including "an individual, partnership, committee, association, corporation, labor organization or any other organization or group of persons . . . ." 2 U.S.C. § 431(11).

In *Buckley v. Valeo*, 424 U.S. 1 (1976) ("*Buckley*"), the Supreme Court construed the Act's references to "political committee" in such a manner as to prevent their "reach [to] groups engaged purely in issue discussion." The Court recognized that "[t]o fulfill the purpose of the Act [the designation 'political committee'] should encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." 424 U.S. at 79.

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[2] Two appellate courts have determined that part (b) of this regulation is invalid. *Maine Right to Life v. FEC*, 98 F.3d 1 (1st Cir. 1996) and *FEC v. Christian Action Network*, 110 F.3d 1049 (4th Cir. 1997). On September 22, 1999, the Commission unanimously adopted a statement formalizing a pre-existing policy of not enforcing subsection (b) in the First and Fourth Circuits. In January 2000, a district court in Virginia issued a nationwide injunction preventing the Commission from enforcing 11 C.F.R. 100.22(b) anywhere in the country. *Virginia Society for Human Life, Inc. v. FEC*, 83 F.Supp.2d 668 (E.D. Va. 2000). The FEC has filed an appeal of the injunction.

In *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986) ("*MCFL*"), the Supreme Court analyzed whether a non-profit advocacy corporation that had made more than $1000 in independent expenditures was a political committee. The Court noted that the "central organizational purpose" of *MCFL*, which it found to be issue advocacy, did not meet the *Buckley* definition of a political committee, i.e., it was not controlled by a candidate and did not have as a major purpose the nomination or election of a candidate. 479 U.S. at 252, n.6. The *MCFL* Court also noted, however, that should the organization's "independent spending become so extensive that the organization's major purpose may be regarded as campaign activity, the corporation would be classified as a political committee." 479 U.S. at 262.

In *Akins v. FEC*, 101 F.3d 731 (D.C. Cir. 1996) (*en banc*), the court held that the Commission's application of the "major purpose" test to find political committee status in MUR 2804 was inappropriate. The court held that the statutory language defining "political committee" is not ambiguous, 101 F.3d at 740, but further noted that the Supreme Court's discussion of "major purpose" in *Buckley* and *MCFL* applied only to independent expenditures, not to coordinated expenditures and direct contributions. *Id.* at 741-42. The facts of the instant matter involve independent expenditures, which the court of appeals indicated require application of the major purpose test. However, the Supreme Court subsequently vacated this decision for other reasons, *see FEC v. Akins, et al.*, 524 U.S. 11 (1998), and remanded it to the Commission without ruling on the criteria for an organization to be deemed a "political committee." As a result, there is no controlling judicial precedent for the criteria to be applied in determining the "political committee" status of an entity, and the Commission is thus left with only its own precedent construing prior Supreme Court decisions – the use of a two-pronged approach

consisting of the $1,000 statutory threshold and an examination of the "major purpose" of an organization.

Pursuant to 2 U.S.C. § 441a(a)(1)(C), no person shall make contributions to any political committee other than a candidate's authorized political committee, or a party committee, in a calendar year which, in the aggregate, exceed $5,000. Pursuant to 2 U.S.C. § 441a(a)(3), no individual shall make contributions aggregating more than $25,000 in any calendar year. It is illegal for any political committee to knowingly accept any contribution in violation of section 441a. In addition, the Act requires any organization which qualifies as a political committee to register with the Commission and to file periodic reports of all receipts and disbursements. 2 U.S.C. §§ 433 and 434.

Section 441b(a) of the Act generally prohibits corporations from using general treasury funds to make a contribution or expenditure, including an independent expenditure, in connection with federal elections. *See also* 11 C.F.R. § 114.2. However, in *MCFL*, the Supreme Court held, *inter alia*, that section 441b's prohibition of independent expenditures from a corporation's general treasury funds cannot be applied constitutionally to a "class of organizations" that, although corporate in form, do not present the dangers that section 441b is designed to prevent. Such organizations (also known as "qualified non-profit corporations" or "QNCs"), according to the Court, have the following features. First, the corporation was "formed for the express purpose of promoting political ideas, and cannot engage in business activities." 479 U.S. at 264. Second, the corporation "has no shareholders or other persons affiliated so as to have a claim on its assets or earnings." *Id.* Finally, the corporation "was not established by a business corporation or a labor union, and it is its policy not to accept contributions from such entities."

In 1995, the Commission promulgated 11 C.F.R. § 114.10, implementing 2 U.S.C. § 441b in light of *MCFL*. The regulation sets forth several criteria that must be met to achieve the status of a QNC exempt from the prohibition on corporate contributions. First, the corporation must have, as its only express purpose, the promotion of political ideas. 11 C.F.R. § 114.10(c)(1). Second, the corporation cannot engage in business activities. 11 C.F.R. § 114.10(c)(2). Third, the corporation cannot have shareholders or other persons who are affiliated in any way such that they could make a claim on the organization's assets or earnings; or have any persons who have been offered a benefit such that it would act as a disincentive for them to disassociate themselves from the corporation on the basis of a difference of opinion with the corporation on a political issue. 11 C.F.R. § 114.10(c)(3). Fourth, the corporation cannot have been established by a business corporation or a labor organization, and cannot directly or indirectly accept contributions from business corporations or labor organizations. 11 C.F.R. § 114.10(c)(4). Finally, the corporation must be described in 26 U.S.C. § 501(c)(4). 11 C.F.R. § 114.10(c)(5).[3]

Commission regulations provide that when a qualified non-profit corporation makes an independent expenditure, such a corporation must certify that it is eligible for an exemption from

[3] Section 501(c)(4) describes a class of organizations known as social welfare organizations which are not organized for profit, but are operated exclusively for the promotion of social welfare, and which are exempt from certain tax obligations. *Explanation and Justification for Regulations on Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures*, 60 FR 35292, 35301 (July 6, 1995). Such organizations are allowed to participate in a limited amount of political activity. *Id.* However, filing for 501(c)(4) status is permissive rather than required, which is why the regulation is phrased as it is. *Id.* at 35302.

the prohibitions against corporate expenditures contained in 11 C.F.R. part 14. 11 C.F.R. § 114.11(e)(1). Such certification must be filed no later than the due date of the first independent expenditure report required under 11 C.F.R. § 114.11(e)(2), but the corporation is not required to submit the report prior to making the expenditure. 11 C.F.R. § 114.11(e)(1)(i). The certification may be made as part of filing the independent expenditure form, FEC Form 5. 11 C.F.R. § 114.11(e)(1)(ii). A qualified non-profit corporation which makes independent expenditures aggregating in excess of $250 per calendar year must file reports in accordance with 11 C.F.R. § 109.2. 11 C.F.R. § 114.11(e)(2).

Pursuant to 2 U.S.C. § 434(c) and 11 C.F.R. § 109.2, every person other than a political committee, who makes independent expenditures aggregating in excess of $250 during a calendar year shall file a signed statement or report on FEC Form 5 with the Commission or Secretary of the Senate in accordance with 11 C.F.R. § 104.4(c). If an independent expenditure is made in support of, or in opposition to, a candidate for the Senate, then all reports shall be filed with the Secretary of the Senate and the Secretary of State for the state in which the candidate is seeking election. 11 C.F.R. § 104.4(c)(2). Pursuant to section 109.2(a)(2), such reports shall be filed "at the end of the reporting period (quarterly pre-election post-election semi-annual annual) (See 11 C.F.R. 104.5) during which any independent expenditure in excess of $250 is made." In addition, an independent expenditure in excess of $1,000 "made after the twentieth day, but more than 24 hours before 12:01 a.m. of the day of an election shall be reported within 24 hours after such independent expenditure is made." 11 C.F.R. § 109.2(b). For the 1998 general election, this period ran from October 15, 1998 though November 1, 1998.

Whenever any person makes an expenditure for the purpose of financing a communication expressly advocating the defeat of a clearly identified candidate, the

communication, if not authorized by a candidate or a candidate's political committee or its agents, shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3). This requirement applies to communications by qualified non-profit corporations. 11 C.F.R. § 114.11(g).

B. The Complaint

Complainant bases most of its factual allegations on an affidavit filed by Douglas Berman, CFA's former chairman, in *Republican National Committee and Gant Redmon v. Federal Election Commission*, Civ. No. 98-CV-1207 (WBR) (D.D.C.), which is attached as an exhibit to the complaint in this matter ("Berman Affidavit").

The complaint states that CFA is a political committee because it meets the definition set forth in 2 U.S.C. § 431(4). Complainant reaches this conclusion because "[o]ver the years, CFA has accepted contributions from more than one individual, rendering it a 'group of persons' or an 'association'," and because CFA has admitted that it made "well over $1,000 in expenditures" during 1998. Additionally, Complainant contends that CFA cannot claim exemption from the definition of a political committee as a qualified nonprofit corporation because "campaign activity was a major purpose of [CFA] in 1998." In that year, CFA "spent nearly a half million dollars on television advertisements that [CFA] itself characterized as 'independent expenditures' under FECA." According to Complainant, these expenditures, reported in a Form 5 filing by CFA on October 22, 1998, as coming from Jerome Kohlberg, "directly financed advertisements . . . that advocated the defeat of Representative Jim Bunning for the office of United States Senator." The complaint then sets forth the text of one such advertisement. *See infra* for text of that advertisement, entitled "Again."

Complainant further contends that, as a result of having achieved political committee status, the $460,029 received from Jerome Kohlberg for the 1998 independent expenditure effort, as well as other monies contributed by Mr. Kohlberg for CFA's 1998 activities, a total of $2,425,000, were excessive contributions made in violation of 2 U.S.C. §§ 441a(a)(1)(C), (a)(3).

Complainant notes that CFA's sole filing with the Commission was a report of its independent expenditure, and that the contents of this report suggest that certain other violations were committed. First, Complainant notes that CFA's filing indicates a $466,069 contribution from Jerome Kohlberg, but that an exhibit to the Berman Affidavit states that the amount contributed was $466,029. Complainant further points out that CFA reported its receipt of Mr. Kohlberg's contribution on its FEC Form 5 as occurring on October 14, 1998, but that the same exhibit cited above demonstrates that it was made on October 16, 1998. Complainant also argues that CFA must have misreported the date of its independent expenditure, as it could not have been made on October 14, 1998 if Mr. Kohlberg's contribution, which paid for it, was not received until October 16, 1998. Complainant suggests that, as a result of the above discrepancies, CFA may have filed an inaccurate FEC Form 5, and may have done so purposefully, in order to justify not having to meet the 24-hour reporting requirement for certain independent expenditures. Complainant also alleges that CFA, having become a political committee, failed to register and file periodic reports, in violation of 2 U.S.C. §§ 433 and 434(a).

Complainant also believes that CFA's disclaimer was inadequate. Complainant states that, upon information and belief, CFA's disclaimer read: "Paid for by CFA." Complainant argues that this disclaimer hid who actually paid for the expenditure, and suggests that the name of Jerome Kohlberg should have been included as the person who actually paid for the expenditure. Complainant alludes to rules promulgated by the Federal Communications

Commission ("FCC"), which, Complainant suggests, require a political advertisement for an organization which is financed by a sole, or virtually sole, donor, to include the name of the donor in its disclaimer *(citing In re Trumper Communications of Portland, Ltd., et al.*, 11 FCC Record 20415 (Oct. 29, 1996)), and arguing that the FCC felt that disclosure of the donor was necessary to inform the public of the true source of the money behind the advertisement.

Complainant asserts that had CFA filed a 24-hour report, it could have determined the funding behind the ads, and then filed a complaint with the FCC to compel television stations to disclose Mr. Kohlberg's identity.

C. The Response

The response asserts that CFA was not a political committee, but was acting in accord with Commission regulations adopted pursuant to *MCFL*. Respondents further contend that the expenditure in question occurred on October 14, 1998, and thus did not fall within the 24-hour reporting period. Additionally, Respondents state that the disclaimer on the challenged advertisement was appropriate, that the Commission does not need to rely on an FCC rule in interpreting a Commission rule, and that, in any event, Complainant misstated the FCC rule.

Respondents object to Complainant's characterization of CFA's activities as an "obvious effort to conceal," noting that the complaint was based entirely on publicly-available documents filed with the Internal Revenue Service (CFA's tax returns), the Congress (CFA's Lobbying Act reports), and the Commission (CFA's FEC Form 5). CFA notes that its Form 5 was actually filed five days before the advertisement in issue aired, and that the advertisement was the subject of certain media criticism which identified Mr. Kohlberg as the source of the funds used to pay for the advertisement.

Regarding CFA's activities, Respondents state that, in 1997, CFA's revenues totaled $1,482,485, and that it spent $1,575,526 on program-related activities, and that in 1998, CFA had revenues of $3,043,106 and spent $2,677,215 on program-related activities. With regard to the specific activities covered by CFA's Form 5, CFA notes that it sponsored two television commercials concerning the campaign finance reform positions of the candidates in the 1998 election for the U.S. Senate in Kentucky, Jim Bunning and Scotty Baesler. The first commercial, which ran from October 16, 1998 through October 27, 1998 and was entitled "Dog," showed various pictures of Mr. Bunning with a voice-over recitation of the following text:

> Scotty Baesler was a leader in passing a bill to clean up our campaign finances.
>
> Jim Bunning? On campaign finance reform, he voted no. Why?
>
> Because Bunning has been sniffing out special interest money to feed his campaign.
>
> In fact, HMOs gave Bunning thousands in campaign contributions, then Bunning flip-flopped and opposed real HMO reform.
>
> Now Bunning is hunting for even more special interest money.
>
> Taking special interest money. Flip-flopping on HMO reform.
>
> In Kentucky, that dog just don't hunt.

The second ad, which ran from October 27, 1998 through November 2, 1998, and was entitled "Again," showed various pictures of Senator Bunning, with a voice over recitation of the following text:

> Remember how Jim Bunning took money from HMOs, then opposed a patients protection act?

> Well he's at it again. Hunting for campaign money, rolling over for special interests.
>
> Now we learn, Bunning took thousands from health care interests, then voted to slash Medicare. Forcing seniors into expensive private health insurance.
>
> With all this special interest money, no wonder Bunning voted "no" on campaign finance reform.
>
> On November 3rd, send Jim Bunning and his hungry dogs, back to the pound.

Respondents state that CFA contracted with The Communications Company ("TCC"), a media consulting firm, for the production of the advertisements and the acquisition of television advertising time slots. TCC projected the total cost of the campaign to be $466,029, and invoiced CFA for that amount on October 13, 1998.[4] Payments to TCC which occurred between October 14 and October 22, 1998 all concerned the advertisement entitled "Dog." Payments concerning the ad entitled "Again" did not begin until October 23, 1998. Eventually, the total cost of the effort was much lower than originally anticipated, $314,885.10 as opposed to $466,029, because of an inability to purchase all of the television time slots as had been desired. Costs of producing and running the ad entitled "Again" came to approximately $205,000.[5]

[4] The invoice, a copy of which is attached to the complaint in this matter, is for "Media buy for KY TV fight: 10/16/98 - 11/2/98", for a total of $466,029.00.

[5] This figure is derived from adding the media costs identified by Respondents as being connected with this ad, $190,045.60, and adding half of the amount of production costs Respondents identified as being connected with both ads, approximately, $30,000.

With respect to the allegation that the advertisement focused upon by Complainant was an independent expenditure, Respondents first discuss judicial interpretation of what constitutes "express advocacy." Respondents note the language in *Buckley* that, for there to be express advocacy, "explicit words of advocacy of election or defeat" are required. Respondents assert that judicial authority since the *Buckley* decision has mandated a strict line between what is and what is not express advocacy, and that communications which do not include any of certain terms specified in *Buckley* are beyond the Commission's purview.[6] Respondents assert that the majority of courts have held that communications similar in language and tone to the ad cited in the complaint are not express advocacy, and thus are not independent expenditures subject to FEC jurisdiction, citing *Faucher v. FEC*, 928 F.2d 468 (1st Cir.), *cert. denied*, 502 U.S. 820 (1991) ("*Faucher*"), *Federal Election Commission v. Central Long Island Tax Reform Immediately Committee*, 616 F.2d 45, 53 (2d Cir. 1980) ("*CLITRIM*"), and *Federal Election Commission v. Christian Action Network, Inc.*, 110 F.3d 1049 (4th Cir. 1997) ("*CAN*"), as cases which support their position.

Nonetheless, according to Respondents, consistent with CFA's principles regarding campaign finance reform and its overall views on campaign finance law and policy (including CFA's understanding of the Commission's regulatory approach), CFA did not "take this strict approach to the definition of express advocacy and the regulation of independent expenditures." Instead, CFA "took the path of full disclosure with respect to both of the Kentucky ads."

[6] The terms are: "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," or "reject." *Buckley*, 424 U.S. at 44, fn. 52.

CFA concluded that the appropriate course was to disclose the details of its campaign by filing an FEC Form 5, the FEC's form for reporting independent expenditures by persons other than political committees. A completed Form 5 was faxed to the Commission and placed in overnight mail on October 21, 1998. Respondents state that CFA also filed a copy of the Form 5 with the Kentucky Secretary of State. Respondents assert that the Commission confirmed receipt of the Form 5 on October 22, 1998. Respondents further assert that the Commission received CFA's report five days before the ad cited by Complainant was first broadcast, and one day before a check was first issued for payment of a broadcast of that ad. Respondents note that *The Wall Street Journal* published an editorial criticizing CFA and the Kentucky advertising campaign on October 28, 1998, correctly noting CFA's sponsorship of the ads, the total costs of the ads according to the TCC invoice, and the fact that Jerome Kohlberg was the source of the funds which financed the ads. "Thus," according to Respondents, "the information. . . was readily available to the public...well before the date of the 1998 general election."

With regard to the other allegations, Respondents assert that the Act and Commission regulations exonerate them of any wrongdoing. With regard to the issue of whether CFA is a political committee, Respondents cite the *MCFL* decision , in which the Supreme Court set forth the criteria for allowing qualified non-profit organizations to make independent expenditures without running afoul of the Act, and noting that the Commission has codified these criteria at 11 C.F.R. § 114.10. Respondents further note that, in *MCFL*, the Supreme Court, in *dicta* stated that its criteria would only apply to such organizations should their independent expenditures become so extensive that the organization's major purpose may be regarded as campaign activity.

Applying these considerations, Respondents reject the suggestion that CFA is a political committee. They first note that CFA meets all of the requirements for being a qualified non-

profit corporation under the Commission's regulations, and are thus entitled to run ads such as the 1998 Kentucky ads without the Commission treating CFA as a political committee.

Respondents next claim that, even if the "major purpose" test was applied, the result would be the same. CFA claims that its major purpose is not and has never been campaign activity; rather, its "central organizational" purpose is issue advocacy. Respondents note that the complaint relies on one instance where it claims CFA made an independent expenditure of $466,029 to conclude that it has become a political committee under the major purpose test. Respondents argue that that claim is both incorrect, and insufficient to support the conclusion. Respondents detail CFA's activities over the years in support of its "campaign finance reform agenda," noting that CFA received $1.5 million in contributions in 1997 and about $3 million in contributions in 1998, and that CFA spent over $4.2 million on program related activities in 1997 and 1998. Respondents further point out that CFA spent approximately $600,000 for administrative expenses during this same period.

Respondents note that the complaint only specifically addresses one of the two ads which were a part of the Kentucky project, that the production costs for the one ad amounted to $190,045.60, and that the total spent on both ads was $314,885.10. Thus, Respondents aver, Complainant's charge that CFA spent $446,029 on express advocacy is wrong. Respondents further point out that the amount spent on the one ad was only about 6.2 percent of CFA's total expenditures during 1998, and under 8 percent of its program expenditures in 1998, and argue that, in purely financial terms, the ad expenditure cannot be considered a major purpose of the organization. Further, Respondents point out CFA's other activities during 1998: $1.1 million for radio ads which covered five states, and issue advocacy ads in *The Washington Post* and *The*

New York Times which cost two-thirds as much as the Kentucky ad.[7] Respondents also point out that CFA's efforts involved more than just ads, and included working with legislators and launching a grass-roots petition effort.

Regarding the reporting requirements, Respondents state that CFA did submit a report to the Commission pursuant to applicable rules, and that any allegation of impropriety in this regard is meritless. They note that Complainant acknowledges that if the expenditure in question occurred on October 14, 1998, then that would be outside the 24-hour reporting period.[8]

Respondents set out the timeline with respect to the Kentucky ads as follows. Arrangements for the ad project were finalized in early October 1998. On October 13, 1998, CFA received an invoice from TCC. Mr. Berman approved payment of the invoice on October 14, 1998, and TCC began making payments on CFA's behalf in order to purchase television time slots on that same day. Thus, according to Respondents, the payments on CFA's behalf and CFA's obligation to cover these payments constitute an expenditure for reporting purposes. Respondents assert that a wire transfer of funds to cover CFA's obligation was delayed by two days due to an administrative problem with a new CFA bank account, but that the

[7] Respondents cite other examples, but do not present any information as to their costs.

[8] Respondents note that Complainant alleged that CFA violated that section of the Act dealing with independent expenditures by organizations, "other than political committees," even though Complainant is arguing that CFA is a political committee.

obligation to pay occurred on October 14, 1998, and that this should be considered the date of the expenditure.

Regarding the issue of a proper disclaimer, CFA states that the disclaimer on both Kentucky ads stated:

PAID FOR BY CFA

NOT AUTHORIZED BY ANY POLITICAL

CANDIDATE OR COMMITTEE

Respondents assert that this statement is accurate, and that it is all that the Act or Commission regulations require.

As to Complainant's citation to FCC practice, Respondents assert that FCC practice has no relevance to Commission practice, that the argument should be rejected on these grounds alone, and further that the FCC requirement would impose inconsistent requirements from those of the Act, and would thus be improper pursuant to *Galliano v. U.S. Postal Service*, 836 F. 2d 1362 (D.C. Cir. 1988). Respondents further argue that the FCC regulatory scheme differs greatly from the Commission's, and that, in any event, Complainant has misrepresented the FCC rule.[9]

D. Analysis

1. Independent Expenditure

Complainant contends that the advertisement that CFA entitled "Again," *see* the text of that ad, *supra*, advocated the defeat of Representative Jim Bunning for the office of United States Senator. Respondents have stated that pictures of candidate Jim Bunning appear in the ad. Moreover, the name of candidate Jim Bunning is repeatedly mentioned in the ad, and he is thus

[9] Respondents argue that the FCC rule only applies if the principal who provided funding for the ad also exercised editorial control over it, and that the FCC has decided in other cases that the source of funds need not be disclosed if editorial control was absent. Respondents state that Mr. Kohlberg had no editorial control over the CFA ads.

"clearly identified." Therefore, the only question remaining is whether the ad expressly advocated Jim Bunning's defeat.

The ad places Mr. Bunning in a negative light for his votes on health care issues and issues of campaign finance reform, linking them to "special interest money." Having placed Mr. Bunning in this negative light, the ad then contains the following exhortation: "On November 3rd, send Jim Bunning and his hungry dogs, back to the pound." The reference to November 3rd is the date of the general election, and the action typically taken on that day is voting. Thus, the injunction to "send Jim Bunning . . . back to the pound" is the functional equivalent of instructing people to "vote against" or "defeat" Jim Bunning. The context of the message is such that it has an exhortation and a verb that directs the reader to vote against the candidate and, thus, "can have no other reasonable meaning than to urge the defeat" of Jim Bunning. While the message conveyed by the phrase is "marginally less direct than '[Defeat Jim Bunning]' that does not change its essential nature." *MCFL*, 479 U.S. at 249. The advertising "goes beyond issue advocacy to express electoral advocacy," *id.*, and has "no other reasonable meaning than to urge the . . . defeat" of Mr. Bunning. 11 C.F.R. § 100.22(a). Accordingly, costs associated with the production and placement of the ad entitled "Again" constituted an independent expenditure.[10]

[10] Respondents rely on *Faucher*, *CLITRIM* and *CAN* to conclude that this ad does not contain express advocacy under the Act. Their reliance on these cases is misplaced. In *Faucher*, the court invalidated a Commission regulation because it could not sever the invalid portion which restricted issue advocacy from the potentially valid portion which restricted express advocacy. The court, therefore, did not decide whether the material contained express advocacy. In *CLITRIM*, the court noted that, in the publication in question, "there is no reference . . to the congressman's party, to whether he is running for re-election, to the existence of an election or the act of voting in any election; nor is there anything approaching an unambiguous statement in favor of or against the election of [the congressman]." Likewise, in *CAN*, the court found that the ads in question contained no exhortation to act with respect to any candidate for federal office.

Complainant does not specifically allege that the other ad sponsored by CFA that mentioned and pictured Jim Bunning contained express advocacy, but suggests that there was more than one ad that did so.[11] That advertisement, entitled "Dog," *see* the text of that ad at 12, *supra*, also mentions and pictures Mr. Bunning. It describes the campaign reform positions of both candidates in the 1998 election for the U.S. Senate in Kentucky and casts Bunning's voting record in a negative light. However, that advertisement, which ran from October 23-27, 1998 does not reference an election nor use words urging voters to defeat Jim Bunning, or indeed, to take any action at all. *See FEC v. Furgatch*, 807 F. 2d 857, 864 (9th Cir.) *cert. denied*, 484 U.S. 850 (1987). Thus, under the Commission's regulation at 11 C.F.R. § 100.22(a), this ad would not constitute express advocacy.

Nor does the ad appear to constitute express advocacy under 11 C.F.R. § 100.22(b). Clearly, the ad was run just prior to the general election, and this is an external event to be taken into consideration. However, while a case could be made that the concluding statement "[i]n Kentucky, that dog just don't hunt," suggests that Bunning's record on campaign reform is not the correct one, and therefore he should be defeated, the meaning of the phrase is not wholly unambiguous. Reasonable minds could differ as to whether it encouraged Kentucky residents to vote against Bunning, or to take some other action, such as contacting Representative Bunning regarding his voting record or opposing through some other means the involvement of "special interest" money in the political process, or no action at all. Accordingly, this advertisement does not appear to contain express advocacy, as defined in the Commission's regulations or by judicial precedent. The fact that CFA itself characterized the costs associated with this ad as an "independent expenditure" in its Form 5 filing, in view of its explanations for doing so and the

[11] The Berman Affidavit exhibit attached to the complaint includes descriptions of both ads.

analysis above, should not be dispositive to the contrary. In any event, even if both ads were considered independent expenditures, that would not change the recommendations in this Report. *See* footnote 12, *infra*.

2. Political Committee Status and Related Issues

In its Form 5 filed on October 22, 1998, CFA certified that it met all the qualified non-profit corporation criteria, and this Office has no evidence to the contrary. Therefore CFA may permissibly make independent expenditures without running afoul of the Act's prohibition on corporate expenditures. Implicitly realizing that a QNC is not a political committee solely by virtue of having made independent expenditures, Complainant contends that CFA "may not claim exemption from FECA's definition of political committee as a [QNC] because campaign activity was a major purpose of [CFA] in 1998." In support, Complainant points only to CFA's spending for the Kentucky advertisements.

Complainant's contention is evidently based on *MCFL*, where the Supreme Court, having held the Act's prohibition on corporation's making independent expenditures unconstitutional as applied to certain non-profit advocacy organizations, noted, in *dicta*, that if the advocacy organization's independent expenditures "become so extensive that the organization's major purpose may be regarded as campaign activity, then it may be considered a political committee." 459 U.S. at 262.

The Commission has taken the position that, "[w]hen determining if an entity should be treated as a political committee, . . . the standard used is whether an organization's major purpose is campaign activity; that is, making payments or donations to influence any election to public office." Advisory Opinion 1996-13; *see also* Advisory Opinions 1996-3 and 1995-11.

CFA points out that in 1998, its total revenue was $3,043,106, and the total amount spent on program-related activities was $2,677,215. The amount spent on the "Again" ad, $205,000, is approximately 7.6 percent of this latter amount.[12]

To properly determine whether CFA's expenditures crossed the line for purposes of the major purpose test, it is necessary to examine its other program activities. In 1997, according to CFA's tax return, CFA spent $1,575,526 on program activities. Of this amount, $268,991 was spent on "focus groups and research." The remaining $1,306,991 was spent in the form of a grant to Common Cause for its "Project Independence." According to information on the tax return, the purpose of the grant was to "gather public support of campaign finance reform legislation." Neither of these purposes appears to involve activity designed to influence any election to public office. In 1998, CFA states, and its tax return shows, $2,677,215 was spent on program activities. Given current information in hand, this Office has been able to make the following determinations as to how that money was spent.

Of that amount, $500,212 was spent in the form of a grant to Common Cause, again for its "Project Independence." According to information accompanying CFA's tax return, the purpose of this grant was to " identify and mobilize key activists across the country in support of campaign finance reform." According to the tax return, the remaining $2,177,003 was spent on "focus groups, research and advertisements."

Of this $2,177,003, according to the Berman Affidavit, $1,100,000 was spent on the production and broadcast of certain radio and television advertisements in Arkansas, Georgia,

[12] Including spending for the ad entitled "Dog," which appears to qualify as campaign activity, raises CFA's costs for campaign activity to 11.8 percent of the latter amount, and to 7.5 percent of CFA's program activities for the 1998 election cycle.

Michigan, Mississippi, and New York.[13] The ads were broadcast from January 20, 1998 to September 15, 1998. Of these ads, one, a radio ad entitled "Calculator," did not mention or otherwise reference any Federal officeholder or election. Accordingly, it could not be considered express advocacy, or even campaign activity. The remaining ads all reference an upcoming vote on the McCain-Feingold bill or the Shays-Meehan bill. Each references a specific Federal officeholder, only some of whom were up for re-election in 1998.[14] The various calls to action contained in the ads instruct viewers/listeners to call the identified officeholder and tell him to either "vote yes on McCain Feingold," "ban soft money now," or "vote for the Shays-Meehan campaign reform bill." In two instances, the ads mentioning Congressman Hutchinson and Senator Abraham, the failure of the officeholders to vote in accord with CFA's position was the subject of additional comment. The Hutchinson ad, which referred to Congress "ducking" the issue of campaign finance reform, and which contained sounds of ducks quacking, stated that listeners should tell Congressman Hutchinson to vote for the bill, "or duck hunting season might come early this year." Likewise, the Abraham ad, before instructing listeners to contact Senator Abraham, contains the following exchange:

> W1: Sounds simple to me. Senator Abraham can vote for special interests or he can vote for us.
>
> W2: If he doesn't vote for us, that'll be a real scandal.

Both messages instruct listeners to contact the named officeholder. According to the Berman Affidavit, these ads were run between January 20, 1998 and September 15, 1998.

---

[13] Transcripts of all ads discussed in this report are attached to the complaint in this matter.

[14] Of the officeholders identified, Senator Tim Hutchinson of Arkansas was first elected in 1996 and is not up for re-election until 2002, and Senators Spencer Abraham of Michigan and Trent Lott of Mississippi were most recently elected in 1994 and are not up for re-election until this year. Two of the identified officeholders are Members of the House, John Linder of Georgia and Asa Hutchinson of Arkansas, and thus would have been up for re-election in 1998, and the final officeholder identified, Senator Alphonse D'Amato of New York, was up for re-election in 1998.

It appears that these ads were issue-oriented, rather than campaign-oriented. The ads each reference upcoming, scheduled votes on either the McCain-Feingold bill or the Shays-Meehan bill. Most off these ads were not run close to a time when the named officeholders would be considered candidates for Federal office. Any electoral message, if there is one, is not unambiguous or unmistakable, particularly because no election (or election date) is referenced or imminent.

CFA also published several newspaper ads in *The New York Times*, *The Washington Post*, *Roll Call* and *The Hill*. According to the Berman affidavit, a July 22, 1998 ad in *The New York Times* cost $64,581 to publish. Likewise, an ad published twice in *The Washington Post* in February 1998 (once as a full-page ad and once as a quarter-page ad) cost $66,658. No cost has been provided for a second full-page ad which appeared in *The Washington Post* in August 1998, but, based on the costs already described, it appears that the ad may have cost around $53,000. No costs have been provided for one ad which appeared in *The Hill* in February 1998, or two ads which appeared in *Roll Call* in March 1998.

Other than the "Again" ad in issue in this matter, no ad mentions any election for federal office. No ad exhorts anyone to vote for or against a candidate. Three of the five ads do not even mention any federal officeholder or any candidate for federal office. Of the two ads that mention federal officeholders, one ad appeared in *The Hill* and *The Washington Post* in February 1998. The ad contains a cartoon depicting Senators Trent Lott and Mitch McConnell on horseback, with a group of people in a corral. The McConnell figure says, "Got 'em corralled, Mr. Leader", while the Lott figure responds, "Yup. Let's see if they can pass campaign finance reform now." The text of the ad reads as follows: "Majority Leader Lott and Senator McConnell have fenced in a majority of the Senate. They can't defend soft money on the merits, so they are

stifling reform. Senators, break free. Vote to ban soft money. Vote for McCain-Feingold. Campaign Finance Reform. Now."

The second ad appeared in *The New York Times* on July 22, 1998. It contains a caricature of then-Speaker Newt Gingrich sweeping a piece of paper entitled "Shays-Meehan Bill" under a rug. At the top of the ad is the question: "Can't This Guy Ever Keep His Word?" Under the cartoon is the following text:

> On June 11, 1995 at a New Hampshire town hall meeting, House Speaker Newt Gingrich shook President Clinton's hand and agreed to create a bipartisan blue-ribbon commission on campaign reform.
>
> On November 13, 1997, Speaker Gingrich said, "We are committed to having a vote by sometime in March [1998]."
>
> It is now July 1998 and all Speaker Gingrich has done on campaign finance reform is manipulate House rules to obstruct a real vote.
>
> America deserves a clean vote on Shays-Meehan before the August recess.
>
> Speaker Gingrich, stop sweeping campaign finance reform under the rug.

As can be seen, neither ad calls on the public to support or oppose the election of any federal candidate; their thrust is to urge federal officeholders to support campaign finance reform. Senators Lott and McConnell were not running for re-election in 1998, and the second ad ran in July 1998, well before the general election. Accordingly, this Office believes that these ads do not constitute campaign activity.

The costs associated with the above radio, television and newspaper ads reduce unaccounted-for program activity expenses to approximately $892,800. CFA does not itemize the amount spent on focus groups in 1998; however, it is reasonable to assume that they spent at least as much as they spent in 1997: $268,991. This would reduce the amount to $623,773.

Subtracting the amount spent on the "Dog" and "Again" ads, $466,029, further reduces the amount to $157,774.[15] While the costs of the ad in *The Hill*, and the two ads in *Roll Call*, are not known, the ads themselves did not constitute campaign activity, and their costs would reduce the figure downwards. Moreover, in his declaration attached to Respondents' reply to the complaint, in describing the "Dog" and "Again" ads, Mr. Berman states that, "[t]o the best of my knowledge, CFA has not sponsored any other advertisement that mentioned by name any candidate for federal office in that capacity."

After examining the various program-related activities undertaken by CFA, this Office cannot conclude that any except the ad entitled "Again," and possibly "Dog," constituted campaign activity, and should be counted toward examining whether CFA reached political committee status. Given the relatively small percentage to total spending represented by these expenditures, and the wide range of other CFA activities set forth in the Berman affidavit attached to the complaint which did not involve campaign activity, this Office does not believe that it has been demonstrated that CFA has crossed the "major purpose" line and become a political committee. Since CFA is not a political committee, the funds donated to CFA by Mr. Kohlberg do not constitute contributions subject to the limitations of the Act, and CFA was not subject to the Act's registration or periodic reporting requirements. Accordingly, this Office recommends that the Commission find no reason to believe that Jerome Kohlberg violated 2 U.S.C. § 441a(a)(1)(C),(a)(3), or that CFA violated 2 U.S.C. §§ 433, 434(a) or 441a(f).

[15] As noted, *supra*, CFA ultimately spent less on the ads, $314,885.10, because of an inability to purchase all of the television slots it had desired. In a declaration dated December 7, 1999 attached to the response in this matter, Eileen M. Capone, CFA's treasurer, states that, "[u]ntil recently, CFA had a positive account balance with [TCC], reflecting the difference between the $466,029 that CFA paid for the two Kentucky ads and the total cost of producing and broadcasting those ads." Ms. Capone further states that TCC "has reimbursed CFA for that difference." Thus, it is likely that CFA included the full amount paid out to TCC on its 1998 tax return.

3. Reporting

Costs of producing and running the "Again" ad came to approximately $205,000.[16] Accordingly, it exceeds the $250 cost threshold for reporting independent expenditures. As noted, *supra*, the date of this expenditure was October 14, 1998. Because this date falls outside of the period for which 24-hour notification of independent expenditures had to be reported, CFA was only required to file a report which reflected this independent expenditure no later than 12 days before the general election, or no later than October 22, 1998.

CFA filed an FEC Form 5 on October 22, 1998 regarding both ads.[17] The form contains a certification that Campaign for America was a qualified nonprofit corporation. The name and address of Jerome Kohlberg and the amount of money he contributed for the ad campaign are provided.[18] Further indicated is the fact that monies had been paid to The Communication Company, Inc. in Washington, D.C. on October 14, 1998 for "TELEVISION COMMERCIAL PREPARATION & PURCHASE OF TV TIME", and that the communication was made "FOR SCOTTY BAESLER & AGAINST JIM BUNNING, US SENATE, KY". The report was filed with the Commission and with the Secretary of State for the State of Kentucky.

Although Respondents acknowledge that CFA filed its report with the Commission and with the Secretary of State for the State of Kentucky, because the advertisement involved a Senate race, CFA was required to file its report with the Secretary of the Senate, not the

[16] This figure is derived from adding the media costs identified by Respondents as being connected with this ad, $190,045.60, and adding half of the amount of production costs Respondents identified as being connected with both ads, approximately, $30,000.

[17] CFA'a Form 5 is attached to this report. Attachment 1.

[18] Mr. Kohlberg's occupation is listed as "RETIRED".

Commission.[19] Accordingly, this Office recommends that the Commission find reason to believe that Campaign for America violated 2 U.S.C. § 434(c)(2) and 11 C.F.R. §§ 104.4(c)(2) and 109.2(a). Because Campaign for America's failure to properly file the report did not affect the placing of the information on the public record, or otherwise deprive the public of the information to which it was entitled, this Office further recommends that the Commission take no further action against Campaign for America with regard to this violation, and send an admonishment letter.[20]

4. Disclaimer

Complainant alleges that the advertisement in question failed to contain a proper disclaimer because it did not identify Mr. Kohlberg as the source of the funds for the ad. Nothing in the Commission's regulations require a QNC to provide such information. Indeed, the Explanation and Justification for the regulation requiring disclaimers on independent expenditures states that "a [QNC] that finances an independent expenditure must include a disclaimer that states the name of the corporation and indicates that the communication was not authorized by any candidate or candidate's committee." *Explanation and Justification for*

[19] The Secretary of the Senate receives documents as custodian for the Commission. 2 U.S.C. § 432(g)(2) and 11 C.F.R. § 105.2. After the Secretary has received such documents, the Secretary must transmit either a microfilmed or photocopy of the documents to the Commission "as soon as possible, but in any case no later than two (2) working days after receiving" such documents. 11 C.F.R. § 105.5(b). Appropriate documents are then placed on the public record. Thus, it is conceivable that CFA's failure to follow proper procedure resulted in its Form 5 being placed on the public record sooner than it otherwise would have been.

[20] Complainant also argues that CFA misreported the amount of Mr. Kohlberg's contribution because CFA's FEC Form 5 shows a donation of $466,069 from Mr. Kohlberg, while Mr. Berman stated in an affidavit that the "gross cost of the media buy for these advertisements was approximately $466,029." Thus, Complainant is arguing that CFA reported $40.00 too much. Even if CFA misreported Mr. Kohlberg's contribution by $40, however, that amount is too *de minimis* to be considered a violation. Although it is this Office's position that CFA was not obligated to report the "Dog" ad, given its desire to provide full and complete disclosure to the public, this "overreporting" should also not be treated as a violation. Indeed, as the response makes clear, the actual costs involved in the production and broadcasting of the two ads were much lower than reported, due to the fact that much of the media time which had been sought could not be purchased. It appears that the "gross costs" referred to by Mr. Berman included the total projected costs and not the final costs.

Regulations on Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 FR 35292, 35304 (July 6, 1995). CFA's disclaimer stated:

PAID FOR BY CAMPAIGN FOR AMERICA

NOT AUTHORIZED BY ANY POLITICAL

CANDIDATE OR COMMITTEE

CFA's allusion to FCC requirements that may impose additional requirements does not change the fact that CFA's disclaimer provided all the information required under the Act and the Commission's regulations. Accordingly, this Office recommends that the Commission find no reason to believe that CFA violated 2 U.S.C. § 441d(a)(3).

5. Other Respondents

Although they were named as Respondents, no specific allegation of improper conduct has been made against either Mr. Berman, CFA's former president or Ms. Capone, CFA's treasurer. Accordingly, this Office recommends that the Commission find no reason to believe that they violated the Act. Finally, this Office recommends that the Commission close the file in this matter and approve the appropriate letters.

III. RECOMMENDATIONS

1. Find reason to believe that Campaign for America violated 2 U.S.C. § 434(c)(2) and 11 C.F.R. §§ 104.4(c)(2) and 109.2(a) with respect to its failure to file a Form 5 with the Secretary of the Senate by October 22, 1998, take no further action regarding this violation, and send an admonishment letter.

2. Find no reason to believe that Campaign for America violated 2 U.S.C. §§ 433, 434(a), 441a(f) and 441d(a)(3).

3. Find no reason to believe that Jerome Kohlberg violated 2 U.S.C. § 441a(a)(1)(C) and (a)(3).

4. Find no reason to believe that Douglas C. Berman and Eileen Capone violated the Act.

5. Approve the appropriate letters and close the file.

Lawrence M. Noble
General Counsel

12/19/00
Date

BY: Lois G. Lerner
Associate General Counsel

Attachment
1. CFA's Form 5

A

To be Used by Persons (Other than Political Committees) Incurring Qualified Nonprofit Corporations

1. Name of individual, organization or corporation
CAMPAIGN FOR AMERICA
Address (number and street) ☐ check if different than previously reported
50 F STREET, NW | SUITE 1198
City, State and ZIP Code
WASHINGTON, DC 20001

FEDERAL ELECTION COMMISSION
Dec 22 11 30 AM '98

2. Corporate Items only: Is the filer a qualified nonprofit corporation? ☒ Yes ☐ No
Individual Items only: NAME OF EMPLOYER | OCCUPATION | 3. Identification Number

4. TYPE OF REPORT (check appropriate boxes):
(a) ☐ April 15 Quarterly Report ☒ 12-Day Report preceding the election.
☐ July 15 Quarterly Report
☐ October 15 Quarterly Report
☐ January 31 Year-End Report ☐ 30-Day Report following the General Election.
☐ July 31 Mid-Year Report
(b) Is this Report an amendment? Yes ☐ No ☐

Type of Election	Date of Election	State
GENERAL	11/3/98	KY
	Date of Election	State

5. COVERING PERIOD: FROM 10/1/98 THROUGH 10/14/98 PAGE 1 OF 1

6. CONTRIBUTION(S) RECEIVED (Submit multiple forms if additional space is required)

Full Name, Mailing Address and ZIP Code of Contributor	Name of Employer	Occupation	Date (Month, Day, Year)	Amount
JEROME KOHLBERG 111 RADIO CIRCLE MT. KISCO, NY 10549	-	RETIRED	10/14/98	$466,029

7. INDEPENDENT EXPENDITURE(S) MADE (Submit multiple forms if additional space is required)

Full Name, Mailing Address and ZIP Code of Payee	Purpose of Expenditure	Date (Month, Day, Year)	Amount	Check One: Support	Check One: Oppose	Name and Office Sought (Senate, Name) of Federal Candidate
THE COMMUNICATIONS COMPANY, INC. 511 2ND STREET, NE WASHINGTON, DC 20002	TELEVISION COMMERCIAL PREPARATION & PURCHASE OF TV TIME	10/14/98	$466,029	✓	✓	COMMUNICATIONS IS FOR SCOTT BRESSLER & AGAINST JIM BUNNING, US SENATE, KY

8. TOTAL CONTRIBUTIONS (multi-page filers enter total on page 1) $ 466,029

9. TOTAL INDEPENDENT EXPENDITURES (multi-page filers enter total on page 1) $ 466,029

Under penalty of perjury, I certify that the independent expenditures reported herein were not made with the cooperation or prior consent of, or in consultation with, or at the request or suggestion of, a candidate or a candidate's agent or authorized committee. For all they receive the financing, dissemination, distribution or republication of any campaign materials prepared by a candidate or a candidate's agent or authorized committee. In addition, if the independent expenditures reported herein were made by a corporation, I certify that the corporation is a qualified nonprofit corporation under the Commission's regulations.

TYPE OR PRINT NAME OF PERSON COMPLETING FORM
DOUGLAS BERMAN, PRESIDENT

SIGNATURE (multi-page filers sign page 1 only) DATE
Douglas E. Berman 10/21/98

Subscribed and sworn to before me this 21st day of October, 98

My Commission Expires 7/6/02

Carol Nacchia
Notary Public
CAROL NACCHIA
A Notary Public of New Jersey

NOTE: Submission of false, erroneous or fraudulent information may subject the person responsible to penalties of 2 U.S.C. 437g.

For further information, contact:
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463
Toll Free 800-424-9530 Local 202-219-3420

Any information copied from this report may not be sold or used by any person for the purpose of soliciting contributions or for any other commercial purpose except that the name and address of any political committee may be used to solicit contributions from that committee.

FEC FORM 5 (4/96)

98-0X-XX1-1354

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: December 21, 2000

SUBJECT: MUR 4940-First General Counsel's Report

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

Open Session _____ Closed Session _____

CIRCULATIONS		DISTRIBUTION	
SENSITIVE	☒		
NON-SENSITIVE	☐	COMPLIANCE	☐
72 Hour TALLY VOTE	☐	Open/Closed Letters	☐
		MUR	☐
24 Hour TALLY VOTE	☐	DSP	☐
24 Hour NO OBJECTION	☐	STATUS SHEETS	☐
		Enforcement	☐
INFORMATION	☐	Litigation	☐
		PFESP	☐
96 Hour TALLY VOTE	☒	RATING SHEETS	☐
		AUDIT MATTERS	☐
		LITIGATION	☐
		ADVISORY OPINIONS	☐
		REGULATIONS	☐
		OTHER	☐

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Lawrence M. Noble
General Counsel

FROM Mary W. Dove/Lisa R. Davis
Acting Commission Secretary

DATE: December 28, 2000

SUBJECT: MUR 4940 - First General Counsel's Report
dated December 19, 2000.

The above-captioned document was circulated to the Commission on **Thursday, December 21, 2000.**

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

Commissioner Mason	_
Commissioner McDonald	_
Commissioner Sandstrom	_
Commissioner Smith	_
Commissioner Thomas	**XXX FOR THE RECORD**
Commissioner Wold	_

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Lawrence M. Noble
General Counsel

FROM Mary W. Dove/Lisa R. Davis
Acting Commission Secretary

DATE: December 29, 2000

SUBJECT: MUR 4940 - First General Counsel's Report
dated December 19, 2000

The above-captioned document was circulated to the Commission on **Thursday, December 21, 2000.**

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

Commissioner Mason	_
Commissioner McDonald	_
Commissioner Sandstrom	**XXX**
Commissioner Smith	_
Commissioner Thomas	_
Commissioner Wold	_

This matter will be placed on the meeting agenda for **Tuesday, January 9, 2001.**

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

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Lois Lerner
Acting General Counsel

FROM Mary W. Dove/Lisa R. Davis
Acting Commission Secretary

DATE: January 4, 2001

SUBJECT: MUR 4940 - First General Counsel's Report
dated December 19, 2000.

The above-captioned document was circulated to the Commission on **Thursday, December 21, 2000.**

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

Commissioner Mason	_
Commissioner McDonald	**XXX FOR THE RECORD**
Commissioner Sandstrom	_
Commissioner Smith	_
Commissioner Thomas	_
Commissioner Wold	_