

FEB 2 2001
SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 4940
Campaign for America)

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED: Reopen MUR 4940 with respect to Campaign for America, rescind the finding that there is 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), and find no 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).

II. BACKGROUND

Following the recommendation of this Office, the Commission, on January 17, 2001, found 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) based on this Office's representation that Campaign for America had failed to file a Form 5 with the Secretary of the Senate. Consistent with this Office's recommendations, the Commission further voted to take no further action regarding this violation, and to send an admonishment letter. This Office had made its recommendations because the copy of the Form 5 attached to the complaint in this matter showed that it had been filed with the Commission, and because the response to the complaint, in discussing the filing of

the Form 5, mentioned only that it had been filed with the Commission and the Kentucky Secretary of State, and made no mention of filing the report with the Secretary of the Senate. *See* MUR 4940, *Response of Campaign for America et al. to the Complaint Filed by the National Republican Senatorial Committee* at 10.¹

On January 31, 2001, counsel for Campaign for America contacted the attorney assigned to this matter and informed him that Campaign for America had in fact timely filed its Form 5 with the Secretary of the Senate, and inquired as to whether anything could be done to correct the Commission's finding. Counsel faxed a copy of the Form 5 Campaign for America had filed with the Senate to staff that same day. Attachment 1. A review of the Commission's microfiche files shows that a copy of Campaign for America's Form 5, date-stamped by the Secretary of the Senate, was available to staff as of the time this Office made its recommendations. This Office is treating counsel's request as a request to reopen MUR 4940 and to rescind the reason to believe finding.

Typically, the Commission's practice is to deny a request to rescind reason to believe findings. This practice reflects the fact that a finding of reason to believe was made on the basis of the information available to the Commission at a particular time, and that "reason to believe" is only a preliminary finding and is a statutory prerequisite to an investigation to ascertain whether there is probable cause to believe a violation has occurred, and does not constitute a determination by the Commission that a violation has occurred.

¹ The complaint did not allege that Campaign for America had failed to file its Form 5 with the Secretary of the Senate; rather, this apparent violation was generated from within this Office.

In this case, however, information was available to this Office that would have shown that Campaign for America complied with the filing requirement, and that therefore, there was no basis for the reason to believe finding. This Office should have been aware of this filing, and it erred in its recommendation. Accordingly, this Office believes that it is appropriate under these circumstances for the Commission to depart from its typical practice, and to rescind the reason to believe finding.²

Based on the above, this Office recommends that the Commission reopen MUR 4940 with respect to Campaign for America, that it rescind its finding that there is 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), and that the Commission find no 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). If the Commission approves this Office's recommendations, this Office will include an acknowledgment of, and apology for, our error in the letter to the respondent.

III. RECOMMENDATIONS

1. Reopen MUR 4940 with respect to Campaign for America.
2. Rescind the finding that there is 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).

² While Campaign for America could itself correct the public record, the Commission's finding might, even allowing for its lack of legal consequences, carry a certain stigma. See Federal Election Commission, Annual Report 1999 at 52 (where, in discussing the legislative recommendation to modify the terminology of the "reason to believe" finding to "reason to open an investigation," the Commission noted that the phrase "reason to believe" is "misleading and does a disservice to both the Commission and the respondent.") Moreover, given that that the recommendation to the Commission was faulty, this Office believes that the burden to correct the public record should not rest with Campaign for America.

3. Find no 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).
4. Approve the appropriate letters.
5. Close the file.

Lois G. Lerner
Acting General Counsel

2/2/51
Date

BY: Abigail Shaine
Abigail Shaine
Acting Associate General Counsel

Attachment

Fax from counsel for Campaign for America

Staff Assigned: Tony Buckley

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
1615 L Street, NW, WASHINGTON, DC 20036-5694
(202) 223-7300

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF THE CLERK

FACSIMILE COVER LETTER

JAN 31 9 53 AM '01

FROM: Robert P. Parker

DATE: January 31, 2001

TOTAL NUMBER OF PAGES: 2 (Including Cover Sheet)

TO THE FOLLOWING:

| <u>NAME</u> | <u>FIRM/COMPANY</u> | <u>FAX NO.</u> | <u>Time Sent</u> |
|-----------------------|-----------------------------|----------------|------------------|
| Anthony Buckley, Esq. | Federal Election Commission | 202-219-3923 | |

MESSAGE:

Dear Mr. Buckley,

Attached, as we discussed, is a copy of the FEC Form 5 that CFA filed with the Secretary of the Senate.

R.P.P.

Return Facsimile Number: 223-7420

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE. THANK YOU.

If transmission is incomplete, or you have other questions, please call: 223-7339

Operator:

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

2. Corporate filers only
 Is the filer a qualified nonprofit corporation? ☒ Yes ☐ No
Individual filers 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 **GENERAL** Date of Election **11/3/98** State **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 |
|--|------------------|----------------|-------------------------|------------------|
| BERNARD KOHLBERG 111 RADIO CIRCLE MT. KISCO, NY 10549 | - | RETIRED | 10/14/98 | \$466,069 |

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 | | Name and Office Sought (District, State) of Federal Candidate |
|---|--|-------------------------|------------------|-------------------------------------|-------------------------------------|---|
| | | | | Support | Oppose | |
| THE COMMUNICATIONS COMPANY, INC. 511 2ND STREET, NE WASHINGTON, DC 20002 | TELEVISION COMMERCIAL PREPARATION & PURCHASE OF TV TIME | 10/14/98 | \$466,029 | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | COMMUNICATION IS FOR SCOTTY BRESLER & 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, nor did they involve 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 Berman 10/21/98

Subscribed and sworn to before me this **21ST** day of **October** 19 **98**
 My Commission Expires **7/2/02**
Carmel Macchia (Notary Public)
CARMEL MACCHIA

NOTE: Submission of false, erroneous or incomplete information may subject the person signing this report 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 reported herein may not be used for sale or use by any person for the purposes 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)

ATTACHMENT **1**
 Page **2** of **2**



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission ^{by} Secretary

FROM: Office of General Counsel ^{by}

DATE: February 2, 2001

SUBJECT: MUR 4940-General Counsel's Report #2

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

Open Session _____

Closed Session _____

CIRCULATIONS

SENSITIVE

☒

NON-SENSITIVE

☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

96 Hour TALLY VOTE ☐

DISTRIBUTION

COMPLIANCE

☒

Open/Closed Letters ☐

MUR ☐

DSP ☐

STATUS SHEETS ☐

Enforcement ☐

Litigation ☐

PFESP ☐

RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐