PATTON BOGGS LLP
ATTORNEYS AT LAW

2550 M Street, NW
Washington, DC 20037-1350
202-457-6000
Facsimile 202-457-6315
www.pattonboggs.com

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February 3, 2000

Benjamin L. Ginsberg
202-457-6405
bginsberg@pattonboggs.com

John R. Velasquez, Jr.
Acting Central Enforcement Docket Supervisor
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 4953 -- National Republican Congressional Committee and Donna Anderson, as Treasurer

Dear Mr. Velasquez:

On behalf of the National Republican Congressional Committee ("NRCC") and Donna Anderson, as Treasurer, this responds to the complaint filed in the above-captioned matter by the NRCC's rival political party committee. As demonstrated below, this complaint, by virtue of its obvious motivation, should be dismissed forthrightly by the Commission.

Introduction: The complaint's basic premises are wrong, and show why the complaint is without merit. There is no evidence, and none exists, that the NRCC "established" any of the outside groups named in the complaint. Affidavit of John Guzik ("Guzik Aff.") ¶2, *See Attachment A*. The NRCC did send a donation to one of the groups (the USA Family Network) on October 20, 1999. *Id*, ¶3. The NRCC based its funding decision the materials presented by USA Family Network. *See Attachment B;* Guzik Aff. ¶4. The contribution, which was fully reported by the NRCC, Guzik Aff. ¶5 is not, under any interpretation of the Federal Election Campaign Act ("Act"), *per se* illegal. Yet the foundation of the complaint is otherwise.

Furthermore, the complaint is based on the incorrect assumption that the recipient organization is a political committee under the Act and that the transferred funds were used for an electioneering activity. There is no evidence for these assumptions, and the NRCC believes that neither is true. As such, there are no "illegal activities", Complaint at 2, and no violations of the Act or the Commission's Regulations. Accordingly, the complaint should be dismissed.

Discussion: There is nothing in the Act or the Commission's Regulations that prohibits donations by a political party committee to a group organized as tax exempt under the Internal

Doc. 509395

Revenue Code. *See e.g.,* 2 U.S.C. § 439a. The NRCC made a contribution to one of the three groups listed in the complaint. There is no evidence presented that the USA Families Network has used, or will use, the funds for any purpose that falls under the Act or the Commission's Regulations.

The Democratic Congressional Campaign Committee ("DCCC") first tries to taint this otherwise permissible transfer by alleging that the USA Family Network and the other groups named are political committees. The NRCC did not believe at the time of the transfers, and does not believe now, that the USA Family Network, or either of the other groups, is a political committee. The NRCC did not establish or authorize the creation of any of the three committees named in the complaint, and none of the groups would appear to fall under the definition of political committee at 11 C.F.R. § 100.5. There is no evidence presented in the complaint to bring any of the groups under the definition of political committee.[1]

Similarly, claims of affiliation of the three groups and the NRCC must also fail under the statutory and regulatory definitions. No matter the rhetorical sleights of hand, even if a Member of Congress does assist in establishing a 501(c) entity, that entity is not automatically affiliated with the NRCC, even if the Member is in the Republican leadership and therefore does play a role at the NRCC. The affiliation test put forward in the complaint at 4 is close to correct, but irrelevant since there is no evidence that it applies here. There simply is no evidence of any activity by USA Family Network, or either of the other groups, that falls under the Act or Regulations that would make affiliation relevant, even if it were true.

As for the actual donations, the complaint hyperbolically describes them as "brazen transfers", complaint at 5. In fact, the funds given to the USA Family Network were fully reported. The NRCC made no contributions to the other two groups listed in the complaint. The funds were given by the NRCC with no strings attached; in other words, the NRCC had no control over how the funds were spent.

The NRCC believed the funds would be used in a manner consistent with the materials presented by USA Family Network, *see Attachment B,* and not for any electioneering purposes as alleged in the complaint. None of the activities described in those materials fall under the Act.

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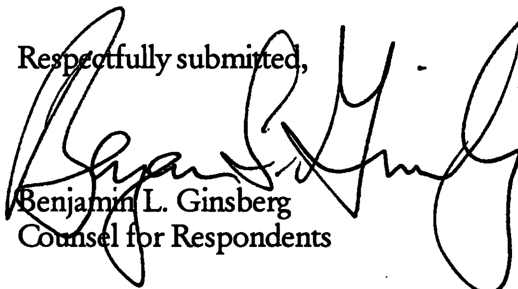
[1] The complaint attempts to use statements by current NRCC Deputy Chairman Dan Mattoon. However, Mr. Mattoon joined the NRCC long after these contributions were made and, without dwelling on the context in which statements made were reported as being made, Mr. Mattoon has no first-hand knowledge about the contribution at issue or the reasons behind it.

The brief's reliance on FEC v. California Democratic Party, Civ. S-97-0891 (E.D. Cal. Oct. 3, 1999) is misplaced. That case, even if correctly decided and of precedental value here, concerned a voter registration group set up just before an election to conduct electioneering activity.

The brochures from USA Family Network upon which the NRCC made its funding decision concerned activities that do not fall under the Act or the Commission's regulations. Reliance on this case sets up a "straw man" argument, given that the funds here were sent more than a year before the election and there is no allegation in the complaint about any electioneering activity whatsoever.



Respectfully submitted,

Benjamin L. Ginsberg
Counsel for Respondents

cc: Donald F. McGahn, II, Esquire
National Republican Congressional Committee

Attachment A

BEFORE THE FEDERAL ELECTION COMMISSION

)
) MUR 4953
)

AFFIDAVIT

1. My name is John Guzik. I am the Deputy Executive Director of the National Republican Congressional Committee, located at 320 First Street, SE, Washington, DC 20003.

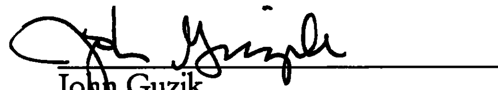
2. The National Republican Congressional Committee ("NRCC") sent a donation to the USA Family Network on October 20, 1999. The NRCC, however, did not send a donation(s) to either the Republican Majority Issues Committee or the Americans for Economic Growth.

3. The NRCC has and/or had no control over how the donation is to be or was spent by the USA Family Network. The NRCC based its funding decision on the materials provided by the USA Family Network.

4. The October 20, 1999 donation to the USA Family Network was fully reported to the Commission by the NRCC.

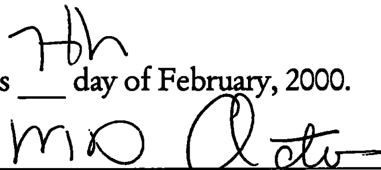
5. The NRCC did not believe at the time of the transfers, and does not believe now, that the USA Family Network, or either of the other groups, is a political committee. The NRCC did not establish or authorize the creation of any of the three committees named in the complaint.

I hereby affirm that all statements herein are true.



John Guzik
Deputy Executive Director
National Republican Congressional Committee

District of Columbia
Signed and sworn to before me this 7th day of February, 2000.



NOTARY PUBLIC
My commission expires: ____________

M.D. ACTON
Notary Public, District of Columbia
My Commission Expires July 14, 2004

Doc. 510183

U.S. Family Network
Working for America's Future

USFN knows that the only way to regain control of our families future is to put the power back into the hands of the people. Support for the Home School tax credit legislation is a good start for parents to gain more influence over their children's lives.

Other USFN projects include:

- Support for a ban on partial -birth abortion.
- Support for medical savings accounts that would allow individuals to set aside $2,500 and families $5,000 a year tax free for medical emergencies.
- Eliminating U.S. payments for United Nations family planning programs.
- Elimination of all inheritance taxes.
- Reduction in the Capital Gains tax.
- Support for voluntary prayer in our public school system.
- Support for First-Time Home buyer tax credit.
- Support for stronger anti-pornography laws.

MISSION STATEMENT

U.S. Family Network is an organization dedicated to restoring our government to citizen control.

As government has continued to expand, special interests and the bureaucracy have come to dominate it at every level. This trend has isolated our government from its citizens, putting it dangerously out of touch with the people it was meant to serve.

Through a combination of education , advocacy and grassroots organization, U.S. Family Network seeks to reassert the values of limited government, freedom of enterprise, strong families and national sovereignty and security.

Our goal is to restore the founding fathers' vision of a free nation guided by the honesty, common sense and goodwill of its citizens.

U.S. Family Network is a 501 (c) (4) grassroots citizens lobby and all contributions are non tax deductible.

U.S. Family Network

Dedicated to Restoring Traditional Family Values

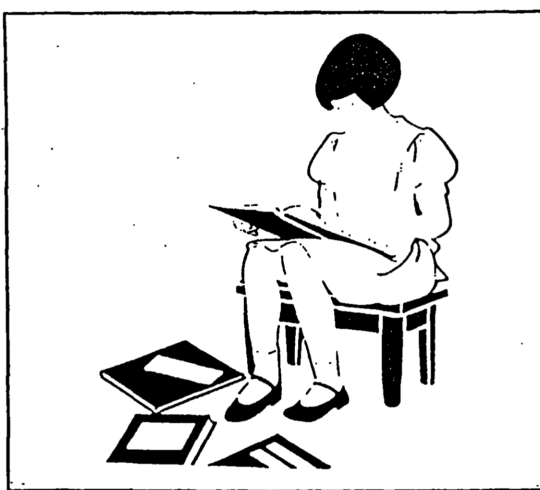
P.O. Box 5711
Arlington, VA 22205

Leading the Fight to Restore Family Values

U.S. Family Network is leading the fight to restore traditional family values again as the guideline of American behavior and driving force behind U.S. political decision making.

USFN realizes that the breakdown of the family, rather than poverty, or race, or any other factor once cited by the liberal establishment, is now widely recognized as the real root cause of rising rates of substance abuse, teen suicide, abortion, academic failure, welfare dependency and violent crime.

Armed with the realization that America's youth need capable, responsible parents who must provide stability and moral guidance in the context of daily family life, USFN has aimed its resources towards pressuring Congress to change or pass laws that will allow parents more control over raising their children.



USFN Leads Home School Tax Credit Project

As more and more of our nation's public schools are over-run by secular humanism and politically correct philosophy, USFN has emerged as the leading national grassroots organization in an effort to win passage of legislation that would give parents a $500.00 per child per year tax credit for every child who is home schooled.

Parents all over America are concerned more today than ever before about the quality of education their children receive as well as their moral and spiritual growth.

Having been instrumental in the drafting of the legislation, USFN is committed to keeping the heat on Congress to force a vote in both Houses of Congress and ultimately signed into law by the President.

USFN Publications: Tools for Concerned Families

USFN's monthly newsletter, "**The Family Trust**" is a timely review and commentary on the legislation currently before Congress and its impact on the American family.

Unlike many other publications, **The Family Trust** examines the "behind-the-scenes" activity in the various House and Senate committees where bills and amendments are changed, watered-down or side-lined altogether.

Special Reports

As important issue emerge, USFN reports on the developments in greater detail. These special issue brief are geared towards informing USFN members and other concerned Americans on what action they need to do to alert their Members of Congress or how and what they need to say or write in letters to their local editors.

Annual Report

Every year, USFN prepares a review of the year's battles, our progress and what still lies ahead for the up-coming year.

U.S. Family Network
Legislative Report

August 6, 1999

ACTIVITY REPORT:

Hill Letters:

1.) **Banking Privacy; H.R. 516:** Ron Paul (R-TX, 14th). Two page letter to House and Senate Banking Committees strongly urging they oppose new federal regulations that would, if adopted, violate financial privacy and impose a huge unfunded mandate on the financial sector. Under this new regulation, banks would be required to collect and build dossiers on all new and existing customers. They would be required to report to several federal agencies regarding any banking activity that deviates from the established "normal" banking practices of their customers.

2.) **Public Access to Federally Funded Research Data** – Letter to the Office of Management and Budget which has the authority over new regulations governing public access to government grant funding research data, urging they adhere to the letter of the law which now requires the release of information from research studies and agreements with research universities and other institutions to the public through freedom of information acts.
Activity:
> Letter to OMB urging strict compliance.
Status:
> Congress has oversight
Planned Activity/ Follow-up:
> Monitor through watchdog groups to review compliance.

3.) **The Child Custody Protection Act (H.R. 1218):** Ileana Ros-Lethien (R-FL). Two page letter and handouts for in-person lobby effort to gain additional co-sponsors. Legislation that would make transporting a minor across state lines to obtain an abortion, without parental consent. A federal crime, if this action would have circumvented a state law requiring involvement 0f a parent or a judge in the girl's abortion decision.
Action:
> Two page letter to House Members urging they co-sponsor, list provided by Congresswomen.
> Handouts (Bill summary and list of current co-sponsors use in in-person visits)
Status:

> Hearings week of May 24 – successfully received, little to no opposition – only concern is the states' rights issue.
> Mark-up in subcommittee – week of June 7th – Judiciary Subcommittee on the Constitution.
> Later action – Full committee and possible vote before August Recess.
Planned Action/Follow up:
> Lobby Full Judiciary Committee for passage and urge Floor vote in July.
> Lobby full House for final passage.

4.) **The Firearms Heritage Protection Act of 1999 (H.R. 1032):** Introduced by Cong. Bob Barr (R-GA). This measure would prevent state or federal civil actions from being brought or continued against manufacturers, dealers, distributors or importers of firearms and ammunition products in interstate commerce for damages resulting from the criminal or unlawful misuse of their products by others. This measure would help place the focus of gun related crimes squarely on the shoulders of the criminals.
Action:
> Two page letter to House Members urging they co-sponsor H.R. 1032.
Status:
> Bill attached to the Juvenile Justice Crime Bill. Needs Leadership push to get through the Judiciary Crime Subcommittee for mark-up before Floor vote.
Planned Action/Follow-up:
> Urge House Leadership to move through committee

5.) **Shays-Meehan Campaign Finance Reform Act of 1999 (H.R. 417).** USFN is working to defeat this bill because it radically expands the power of the Federal Election Commission to regulate citizen groups' activities and communications. By attempting to change the Supreme Court's definition of "express advocacy" and limiting how and when an organization can communicate , the federal government is violating First Amendment freedoms.
Activity:
> Two page letter to targeted House members urging they oppose the Shays-Meehan bill
Status:
> Currently Scheduled for mid-September vote – a discharge petition with 218 signatures would force the bill out to the House Floor for an up or down vote.
Planned Action/Follow up:
> Contact wavering House Republicans to urge they don not sign the discharge petition.

6.) **The K 12 Education Enhancement Now Act (KEEN Act):** Introduced by Congressman Matt Solmon (R-AZ, 1st). A letter of encouragement urging the congressman to continue to move forward and with his measure. Under this

proposal, every teacher in America who subsidizes his or her elementary or secondary students can finally recoup the cost of his individual sacrifice. For teachers, the KEEN Act provides a dollar for dollar reduction of their federal income tax obligation up to $250.00 annually.
Activity:
> Sent Salmon a letter of encouragement
> Visited a dozen Hill offices to urge co-sponsors.

7.) **The Religious Exercise and Liberty Act** – Draft legislation designed to counter last year's Religious Liberty Protection Act that relied on the Commerce Clause as the source of federal authority to protect religious liberty, but unwittingly, would have dangerously expanded the intrusive reach of the federal government over religious liberty.
Activity:
> Signed group letter to full U.S. Congress
Status:
> Currently a coalition of organizations is looking for a sponsor to offer the measure.
Planned Activity/Follow-up:
> Lobby House and Senate to support effort through letters and in-person visits.

8.) **The Federal Anti-Obscenity Laws Act**: Introduced by Rep. Gary Miller (R-CA). This Act would force the Justice Department to protect our communities and children by enforcing ant-obscenity laws currently on the books. This Administration's lack of enforcement of obscenity laws puts families and children at grave risk. Because of this "anything goes" attitude, those who advocate violence against women, engage in child molestation, torture, humiliation, domination and sexual exploitation have been given a powerful tool to advance their crimes against humanity.
Activity:
> Letter to full House
> Follow up visits

9.) **Letter to Senator James Inhofe**: A letter of encouragement to Senator Inhofe thanking him for his support of Congressman Bob Barr's amendment to the Intelligence Reauthorization bill that calls for a legal justification of U.S. citizen surveillance activities.
Activity:
> Letter to Senator Inhofe urging he take the lead in the Senate to introduce legislation.
Status:
> Inhofe offered Barr amendment to Senate Intelligence Reauthorization bill.

10.) **Coalition Letter**: USFN as part of the Coalition for Legal Reform, engaged in a series of letters and lobbying efforts to block amendments to the Senate Commerce, Justice, State Appropriations legislation that would grant the U.S. Department of Justice funding or unprecedented authority to sue lawful industries including tobacco and gun manufacturing companies. These amendments would begin a new government trend designed to legitimize the assault on business (including family run shops and churches) by stripping them of their legal rights and defenses. USFN feels Congress should block any attempt by the Department of Justice to sue a particular industry to raise revenue.

Activity:

> Letters to the full Senate

> Letters to the Full House

Status:

> Currently urging these measure go before House and Senate Judiciary Committee Hearings.

Today's Family

Issue 2 NO 4 **May. 1998**

A Publication By U.S. Family Network

THEME: End the Tax Code – It's complex, unfair, and favors special interests

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The US Tax Code is broken. When the income tax was first introduced in 1914, the entire code was 14 pages long and the top tax rate was 7%. Since 1954 alone the code has been changed 431 times and now numbers 3,458 pages. But that's not the whole story -- the code alone is only a part of the law. The rest comes in the form of implementing regulations and tax court decisions which make the code more complex, more confusing, and sometimes self-contradicting. It literally grows everyday. It is so difficult to understand that an entire industry of accountants and lawyers feed off of it. In fact, some estimates put the cost of compliance at over $225 billion per year. That's $225 billion dollars of unproductive effort -- think what that could do for the economy if channeled into other areas.

This complicated, burdensome tax code is the result of armies of special interests securing preferential treatment from the government through tax breaks and loopholes. As a result, the American public overwhelmingly believes that fairness is the number one problem with the tax code. The average taxpayer lives under the oppressive weight of the code, pays maximum taxes, crosses his fingers, and hopes the IRS won't come after him with capricious interpretations and abusive, intimidating tactics. Meanwhile, those with teams of highly paid accountants and tax attorneys make the code work for them and pay the least amount possible. It's time to put a stop to the inequalities of the present code and develop a simple, fair system that collects an equitable tax, protects families, and allows economic growth to flourish.

It's time to quit talking about tax reform. It's time to scrap the existing code and replace it with a better system. Admittedly, this is not a simple task. It will take focused public debate to get through the first impressions of current proposals, take them apart, put them back together, and produce the fairest, most effective replacement for the existing code. So far, there's talk and talk and more talk but no results.

This legislation, sunsets the federal tax code as of December 31, 2001. Under the tax code termination act, today's unfair and burdensome tax code would survive for only four more years, at which time it would expire and be replaced on Jan. 1, 2002, with a new tax code that will be determined by Congress, the President, and the American people.

The key feature of the Tax Code Termination Act is that it sets a date-certain for the elimination of the current tax code, and by doing so, it *requires* Congress and the American people to begin the national debate on how to replace it.

Four years is plenty of time for Congress and the American people to debate the merits of

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people to begin the national debate on how to replace it. And this is a debate that needs to happen.

Four years is plenty of time for Congress and the American people to debate the merits of all of the reforms that are currently floating about, as well as new ideas that will undoubtedly emerge. And four years is plenty of time for the nation to collectively decide what the new tax system should look like. Having a date-certain will force the issue to the top of the national agenda, where it will remain for the next three years until Congress and the President finish writing the new tax law.

The Tax Code Termination Act also establishes guiding principles for a new tax code. Among these principles is the elimination of the bias against savings and investment, as well as the bias against marriage and families. And everyone agrees that we need a system that is much more fair.

While there is not yet a consensus on which new system should be put into place, we have to start somewhere. And Congress should begin the process now by setting a date-certain for the current tax code to expire.

The Tax Code Termination Act will ensure that America will have a new tax system for a new millennium. Hopefully, it will be one that the average person can finally understand.

The road that leads to the new tax system is long, and much of it will be uphill. But to get there, we have to put one foot in front of the other. It's time for Congress to get started.

U.S. Family Network is a 501 (c) (4) non-profit citizens lobby organization and all contributions are non-tax deducible. USFN has grassroots supporters around the country that are concerned about the future growth and prosperity of the America.

Today's Family

Issue 2 NO 5 June 12, 1998

A Publication By U.S. Family Network

The Truth About the Shays/Meehan Campaign Finance Reform Bill

1. The American people are clamoring for campaign finance reform.

Outside of Washington, campaign finance reform finishes *at the bottom* of the list of issues people care about (3%). Most voters believe that politicians will find a way around whatever new rules are passed (73%).

2. Only wealthy special interests have access to Members of Congress.

Poppycock. The first item on all members' calendars is, and will always be, constituents. Members of Congress meet with lobbyists and policy experts all day long and then go vote the way they want to. Further, it is part of every legislative aide's job to meet with all sides to best prepare their boss for whatever the issue might be. As Senator Bob Bennett (R-UT) said at a recent hearing, "I'll tell you who has access to me --- anyone registered to vote in the state of Utah."

3. Banning soft money is the only way to assure the scandals of the '96 presidential election don't happen again.

The best way to assure the abuses of '96 don't happen again is to punish those who have broken the law.

4. You can constitutionally control issue advocacy.

It is often forgotten that the original 1974 Amendments to the Federal Elections Campaign Act sought to limit issue ads, just as many "reform" proposals do now. The Supreme Court overturned these rules. Nothing is more central to the core of what our country was founded on than the ability of private individuals and groups to discuss, criticize and protest against their elected officials and those that seek office. A twenty-year string of court decisions reaffirm that free and unencumbered political speech enjoys the highest First Amendment protection and cannot be regulated by the federal government.

5. Most issue ads are "thinly veiled campaign ads" and, therefore, can and must be regulated by the Federal Election Commission.

Nothing is more central to the First Amendment than the rights of individuals and groups to participate openly and freely in our nation's political debate. Reformers and misinformed Senators claim that, since issue ads are clearly intended to influence an election, they should be regulated. Buckley v. Valeo anticipated this argument: *of course* the Court held that these ads are intended to influence elections, but our First Amendment rights are so central to our political freedom that unless the words "vote for" or "vote against" are used, these ads are issue advocacy and cannot be regulated by the government.

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6. Shays/Meehan will open up the system.

In fact, Shays/Meehan could be renamed the Incumbent Protection Act. The stratospheric incumbent re-election rate we have today is a direct result of the 1974 rules. Contribution and spending limits and tighter controls on issue advocacy are blatant incumbent protection. All the distortions in the current system are results of the 1974 rules – the 90% incumbent re-election rate, the explosion of issue advocacy and soft money, the increase of millionaires in office, the amount of time candidates have to spend raising money, and the increase in the relative power of the media and celebrities. More of the same regulations are not the answer.

7. Buckley was a 5-to-4 decision and "a close call," vulnerable to future court tests.

On the contrary --- we have 20 years of court decisions reaffirming the central findings of the Buckley decision. In the area of issue advocacy alone, in the years since Buckley was decided, both the Supreme Court and lower courts have time and time again reaffirmed the reasoning and holding of that decision as it pertains to the protection of issue advocacy.

8. Campaign costs are spiraling out of control.

This "explosion" is outside of candidate spending. Candidate spending was virtually flat between 1994 and 1996 with an explosion of issue ads outside of the campaigns themselves. The answer, however, is not to trample the First Amendment rights of private individuals, but to lift the contribution limits on parties and candidates. Let the money spent on many of the issue ads flow directly to the candidates. As for the anger many Members have at private groups expressing their views and --- absolutely --- trying to influence their election --- too bad! Politics and political campaigns belong to the people, not to the candidates and certainly not the federal government. The right to seek to persuade fellow citizens at election time is as fundamental as the right to vote itself.

9. Obscene amounts of money are spent in political campaigns.

Congressional candidates spent approximately $740 million dollars during the last congressional race. This is only slightly higher than the approximately $720 million spent in the 1994 congressional race. $700 million is a lot of money --- but not when compared to what we spend as a society in other areas. These congressional totals average less than $4 per eligible voter. If you look at every race in the country, from dogcatcher to president, the amount spent is less than $10 per eligible voter. As a society, we spend more on potato chips, Barbie dolls, yogurt and a host of other commodities than we do on politics. While many of us may like Barbie dolls and potato chips more than we like politics, only politics has control over every aspect of our lives.

10. We must control the amount of money spent in campaigns because candidates and Members of Congress have to spend all their time raising money.

It is the ridiculous $1,000 contribution limit that has limited the ability of challengers to raise the money they need to mount a successful campaign --- and the reason Members of Congress have to spend so much time raising money. The answer is not to control the amount candidates can spend, which would only further entrench incumbents, but to eliminate the contribution limits. Let the money flow directly to the candidates and, with almost-instant electronic disclosure, let the voters decide.

U.S. Family Network is a 501 (c) (4) non-profit citizens lobby organization and all contributions are non-tax deducible. USFN grassroots supporters are concerned about the future growth and prosperity of the America.

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U. S. Family Network

National ID Talking Points

On Wednesday, June 17th, the National Highway Traffic Safety Administration of the U.S. Department of Transportation (DoT) published the proposed "Driver's License/SSN/National Identification Document" guidelines which will compel all states to comply with federal identification standards over the next two years (check out the proposed regulation text from the Federal Register). The "Notice of Proposed Rule Making" (NPRM) sets out the "standard feature" requirements for driver's license cards and other "identification" documents. States that do not comply will find that their citizens will not be allowed to participate in routine, life-essential functions after the imposed federal deadline of October 1, 2000.

The legislative basis for this rule is Section 656 (b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. This section, titled "State-Issued Driver's Licenses and Comparable Identification Documents," requires Federal agencies to prohibit the use of state driver's licenses after October 1, 2000 unless they conform to the Secretary of the Transportation's standards. Part of the compliance of this section requires states to use Social Security numbers (SSN) as the unique numeric identifier.

The effect of the law and the proposed DoT regulations will be to create a National ID card that will allow the government to monitor your movements and track your medical and financial transactions.

The law also orders the DoT Secretary to consult with the American Association of Motor Vehicle Administrators (AAMVA), who would like to see the incorporation of digitized biometric features into the ID, which would include - but not be limited to – fingerprints, retina scans and DNA prints. This personal biometric information would be electronically stored via a magnetic strip on the back of the card as part of the mandated security features of the card.

Activities that would not be allowed without the proper ID would include:

1) Air travel. The White House Commission on Aviation Safety and Security, chaired by Vice President Al Gore, directed the Federal Aviation Administration to issue new guidelines regarding identification of air travelers, which includes presentation of appropriate ID prior to boarding. Also, under the new DoT regulations, no one could make application for a new passport or passport renewal without presenting the National ID.

2) Banking. The FBI's Financial Center (FINCEN) that monitors all foreign and domestic financial transactions has required banks to confirm the identity and SSN

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Today's Family

Issue 2 NO 6 July 17 , 1998

A Publication By U.S. Family Network

The No Second Chances for Murders, Rapists or Child Molesters Act of 1998

It's Time to Stop Living in Fear

More than 14,000 murders, rapes, and sexual assaults on children are committed each year by individuals who have been released into our neighborhoods after serving a prison sentence for rape, murder, or child molestation. Think about it: every one of these crimes is preventable. These perpetrators were behind bars, convicted of heinous crimes, yet were released to prey on the population again. This is unconscionable, indefensible, and must stop. U.S. Family Network is committed to seeing that it stops.

Public safety demands that we keep these people behind bars. Second chances may be fine for a petty thief. However, most Americans don't believe that individuals who have murdered, raped or molested a child, should have the opportunity to repeat their criminal behavior.

We can prevent the repeat carnage if we simply have the will to keep these offenders in prison for life. It may be stating the obvious, but the fact is that last year, *not a single murderer, rapist, or child molester in prison victimized an innocent person in the community.* Unfortunately, all too many who were released went on to commit these brutal crimes again.

Among the crimes committed by released recidivists were these senseless tragedies:

- In 1997, Arthur J. Bomar Jr. was charged in Pennsylvania with the rape and murder of George Mason University star athlete, Aimee Willard. Bomar had been paroled in 1990 from a Nevada prison, following an eleven year stint in prison for murder. Even in prison he had a record of violence. Bomar is also being investigated for involvement in at least two other homicides that followed his release. Aimee's mother, Gail Willard, has endorsed the bill.

- Laurence Singleton raped and physically mutilated Mary Vincent in California. She showed extraordinary courage and perseverance by surviving the attack and working for his conviction. He was sent to jail, where he should have stayed. Yet because of weaknesses in our criminal justice system, he was later released, and he murdered Roxanne Hayes in Florida. Again in large measure because of Ms. Vincent's efforts, Singleton was recently sentenced to death in Florida. Ms. Vincent has endorsed the bill.

- Gregory Bolin was convicted in Colorado for raping two women. Paroled once, he returned to prison after armed assault. Then, two weeks after being released prematurely for the second time, he moved to Nevada and kidnapped, raped, beat, and finally murdered a 21-year-old woman, Brooklyn Ricks. The prosecution argued that the one lesson Bolin learned during his incarceration was not to leave witnesses to his sex crimes. A Nevada jury sentenced Bolin to death for the murder of Ricks. Ray Wilson, Brooklyn's father, and Brittany Lewis, Brooklyn's sister, have endorsed the bill.

- Robert Simon killed his girlfriend for refusing to engage in sexual relations with his motorcycle gang. For this crime, Simon spent 12 years in a Pennsylvania prison. Eleven weeks after he was paroled, he was arrested for killing a New Jersey police officer, Ippolito "Lee" Gonzalez. A New Jersey jury would later sentence Simon to death for this crime. The judge who had sentenced Simon in Pennsylvania on his first murder conviction, had written to the state parole board that Simon "should never see the light of day in Pennsylvania or any other place in the free world." Louis Gonzalez, brother of Officer Gonzalez, has endorsed the bill.

- Reginald McFadden killed an elderly women in Philadelphia by binding her face with tape and suffocating her. After 25 years in prison he was paroled. Three weeks after his parole, McFadden went on a crime spree in New York. McFadden murdered one person, murdered and raped another, and raped, assaulted, and held hostage a third. The survivor of the one man crime wave, Ms. Jeremy Brown, offered courageous testimony that helped to convince jurors to convict McFadden. After the conviction, Ms. Brown said: "McFadden was given a second chance, for some inexplicable reason, and now we have to pay for it." Ms. Brown has endorsed the bill.

Released murderers, rapists, and child molesters are *more likely* to re-commit the same offense than the general prison population. Released murderers are almost five times more likely than other ex-convicts to be rearrested for murder. Released rapists are 10.5 times more likely than non-rapist offenders to have a subsequent arrest for rape. Astonishingly, a recent Department of Justice study revealed that 134,300 convicted child molesters and other sex offenders are currently living in our neighborhoods across America.

Sentences for these crimes, particularly sex crimes against women and children, are incredibly weak. The average *actual time served* by men after conviction for rape is just 4 years, 9 months. For sexual assault (including molestation, forcible sodomy, lewd acts with children, etc.), it is just 2 years, 9 months. Moreover, fully 13% of convicted rapists receive *no* jail time. Following the tragic death of nine-year-old Megan Kanka, who was killed by a released, convicted child molester, Congress and state legislatures have recognized the rights of families to be aware of child molesters in their midst. Through Megan's Law and its policies of sex offender registration and community notification, citizens have been empowered to take measures to protect themselves. Now we should build on Megan's Law by keeping these dangerous criminals out of our neighborhoods entirely.

Ten years ago, a parent had no right to be notified that a convicted child molester lived next door. Now, many want more than notification that dangerous child molesters are in their neighborhoods and near their schools. They want to live free from convicted sex offenders. Let's keep every molester behind bars so we don't have to have more tears, more memorial services, and more child victims. Again, every crime committed by a released child molester is preventable. And to those who disagree, a simple challenge: *you* explain to the victims of pedophilia why imprisoned child molesters, who have the highest rates of recidivism, should ever be set free to victimize innocent children again. Given that criminals with electronic monitors have raped while wearing the tracking devices, it is foolhardy to hope that registration alone can prevent subsequent depraved acts.

It is time we stop living in fear. To encourage states to keep sex offenders and murders in prison, Congressman Matt Salmon (R-AZ) has introduced "No Second Chances for Murders, Rapists or Child Molesters Act of 1998. The legislation would enact a simple process: if a state releases a murderer, rapist, or child molester and that criminal goes on to commit one of those crimes in another state, the state that released the criminal will compensate the second state and the victim of the later crime. Specifically, the Attorney General, using federal law enforcement funds, would transfer the second state's cost of apprehension, prosecution, and incarceration of the criminal from the state that released the criminal to the second state. Half of the amounts transferred would be deposited in the state's crime victims' fund, and half would be deposited in the state account that collects federal law enforcement funds. Additionally, the proposal provides $100,000 to the victims of the subsequent attack.

The No Second Chances bill is an appropriate exercise of federal authority. It specifically leaves to the states those cases in which a recidivist strikes again in the same state. But states are helpless in preventing many crimes that occur because other states, with weaker laws, allow their released criminals to return to the streets to commit more crimes. This bill alerts states that they will assume a financial risk when they release the most violent felons back into society. Only states that do not take measures to eliminate interstate recidivism among killers, rapists, and child sex predators will suffer. States that have enacted tough criminal laws should not have to pay for the costs of another state's failure to keep a dangerous offender behind bars.

States can reverse the misguided policy of releasing dangerous sex offenders today. (Some notorious child molesters have publicly admitted that they will terrorize young children again if released into society.) The Supreme Court has ruled that a dangerous sex offender may be kept in custody past the expiration of his sentence. A permanent solution would be for the states to pass laws that mandate lifetime incarceration (or the death penalty) for murderers, rapists and child molesters.

Finally, to ensure that Federal law is consistent with the changes we are encouraging the States to make, the legislation instructs the United States Sentencing Commission to amend the Federal Sentencing Guidelines to provide that whoever is guilty of murder, rape, or unwanted sexual acts against a child shall be punished by imprisonment for life (or by the death penalty, in the case of murder).

We know that the one sure-fire way to prevent crime is to keep criminals in jail. The investment in prisons during the 1980s may be the most important factor in the declining crime rate Americans have experienced during much of the 1990s. We spend about $102 per person annually -- 27 cents a day -- on federal, state, and local correction facilities, less than we spend on cable television. What is a couple of additional cents compared to a life taken too early, the permanent damage to a woman raped or a child molested? And let's not forget that society has already spent hundreds of millions of dollars in investigating, prosecuting, and incarcerating these criminals in the first place (not to mention the cost to the original victims).

The most important function of government is to protect the public safety. It is immoral for criminals convicted of the most serious crimes, and already behind bars, ever to be given a second chance to prey upon the innocent. The enactment of the No Second Chances measure would help government meet its fundamental obligation to every man, woman and child in America.

U.S. Family Network is a 501 (c) (4) non-profit citizens lobby organization and all contributions are non-tax deductible. USFN grassroots supporters are concerned about the future growth and prosperity of the America.

U. S. Family Network

Talking Points

"NO SECOND CHANCES" Crime Bill

Every year, convicted murderers, rapists and child molesters who have been released from prison commit thousands of new felonies. The full extent of their crimes has never been measured, and the No Second Chances bill will require these crimes be tallied precisely for the first time. However, from Bureau of Justice Statistics studies, we have a pretty good idea about how many crimes these monsters commit after their release.

If states respond to the No Second Chances bill by keeping convicted murderers, rapists, and child molesters behind bars, they will prevent literally thousands of violent crimes each year, including more than:

- 800 murders, including 83 child victims.
- 3,570 rapes, including 1,315 child victims.
- 9,635 sexual assaults, including 7,510 child victims.
- 16,500 total violent crimes (murder, rape, robbery and assault).
- 8,450 property offenses (burglary, larceny, theft, fraud, and motor vehicle theft).
- Thousands of other drug and public order offenses.

Under the No Second Chances bill, sanctions will be triggered when convicted murderers, rapists, or child molesters are released from prison and proceed to commit these crimes again ***in a different state***. This is a common occurrence.

- Every year, convicted murderers, rapists and child molesters released from prison cross state lines and murder more than 100 people, including 10 children.
- Every year, convicted murderers, rapists and child molesters released from prison cross state lines and rape more than 445 people, including 165 children.
- Every year, convicted murderers, rapists and child molesters released from prison cross state lines and sexually assault more than 1,200 people, including 935 children.

513 Capitol Court NE, Suite 100, Washington, D.C. 20002 • Ph: (202) 543-5143 FAX: (202) 543-5266

Some other facts to keep in mind:

- More than 134,000 convicted sex offenders are currently living in our neighborhoods on probation or parole.
- The average actual time served by men after conviction for rape is just 4 years, 9 months.
- The average actual time served after conviction for sexual assault (including molestation, forcible sodomy, lewd acts with children, etc.) is just 2 years, 9 months.
- The average actual time served for homicide ("willful killing") is just 5 years, 11 months.
- 13% of convicted rapists receive no jail time.
- Just 12% of convicted rapists are ordered to pay their victim restitution.
- More than 5,000 murderers are released from prison annually.
- More than 3,800 rapists are released from prison annually.

This outrage must end. Convicted murderers, rapists and child molesters should stay behind bars. The safety of our neighborhoods should come first.

Statistics are derived from four U.S. Justice Department, Bureau of Justice Statistics reports: "Recidivism of Prisoners Released in 1983" (April 1989); "Sex Offenses and Offenders: An Analysis of Data on Rape and Sexual Assault" (February 1997); "Examining Recidivism" (February 1985); and "Prison Sentences and Time Served for Violence" (April 1995).

June 29, 1998

U. S. Family Network

FOR IMMEDIATE RELEASE
JULY 16, 1998

CONTACT: BOB MILLS
(202) 543-5142

U.S. Family Network Supports "No Second Chances" Crime Bill

U.S. Family Network today announced its support for a "tough-on-crime" bill introduced by Congressman Matt Salmon (R-AZ), the "No Second Chances for Murders, Rapists and Child Molesters Act of 1998."

USFN President, Robert G. Mills, said "One of the most frustrating aspects of our judicial system is seeing the guilty go free and, once free, commit another heinous crime. Lives can be saved and tragedies averted if we have the will to keep these predators locked up."

The Salmon bill will hold States financially accountable for the cost of apprehending, prosecuting and incarcerating individuals convicted of murder, rape or dangerous sexual assault involving a child under the age of 14, if the individuals released are later convicted in another State of the same crimes.

"Criminals who get locked up and stay locked up on longer pose any danger or threat to public safety," said Mills. "Recidivist rates for murders, rapists and child molesters are high -- but the cost to the victims and the communities is higher still. This bill takes the right step in encouraging States to employ the death penalty or at least keep our most violent and heinous criminals behind bars for the rest of their lives."

U.S. Family Network is urging Members of the House of Representatives to contact Congressman Salmon's office at 225-2635 and sign on to this measure as a co-sponsor immediately. "This bill is a bipartisan, common sense measure that will give states the incentive to keep monsters behind bars and out of our neighborhoods" concluded Mills.

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Today's Family

Issue 3 NO 1 APRIL 23 , 1999

A Publication By U.S. Family Network

SUMMARY OF PUBLIC ACCESS TO FEDERALLY FUNDED RESEARCH DATA

Last year, Senators Shelby, Lott, Faircloth and Campbell included a provision in the Treasury and General Government bill (part of Omnibus bill) that directed OMB to revise its rules to make data produced under a federal award or grant subject to the Freedom of Information Act. This provision builds on the existing Paperwork Reduction Act and other public right to know laws and was intended to encourage greater access to data than currently being provided under the law. While access to data and quality of data issues are not new, the need for additional access was highlighted in part by the controversy over global warming and the new NAAQS regulations proposed by EPA back in 1997. While the particulate matter standard was a lighting rod for increasing access to data, the issue of accessing Federally funded research data also touches on much broader concerns like junk science and the use of fraudulent data to support research findings.

The new law required OMB to amend Circular A-110 to require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the Freedom of Information Act (FOIA). It also provided that an agency may charge a reasonable user fee for the costs associated with obtaining that data under the FOIA if requested by a private party.

OMB has since published a proposed revision to Circular A-110 pursuant to this law's requirements. OMB has, however, restricted the revision to "published research findings produced under an award that were used by the Federal Government in developing policy or rules". This proposed revision is much narrower than the language of the provision and the congressional intent expressed through the colloquies accompanying the bill. However, providing access to research data that underlie federal rules and policies is certainly part of the core intent of the law.

The comment period on the proposed revision ended on April 5, 1999. OMB is now expected to review and respond to the comments that were filed and then either move forward with a final rule or possibly come back with a second notice of revision if the comments are so disparate from the original proposal.

Despite the billions of dollars in federal research funding that Congress continues to provide each year, there is significant hostility to expanding public access to federal research results and underlying data from the organized research and university communities. There appears to be two main driving forces behind this strong reaction. First, legitimate practical concerns about how this provision will affect their ability to conduct research. Second, a more visceral response that views federal funding as an entitlement without corresponding accountability to the public that finances their research. (i.e., public too stupid to understand the research and will probably misuse it.)

Even the provision's strongest critics, however, can not and will not publically disavow the underlying policy behind the law -- public/taxpayer right to know. Some are actually even willing to admit that federal funding is not a gift, but a compact between the research community and the public.

The biggest argument currently raised against the new law is the use of FOIA as the means to increase access to federally funded data.

FOIA was chosen for several reasons, most obvious of which was that it is a tried and tested mechanism for making information generally available to the public. FOIA has numerous, broad exceptions that agencies are able to use in processing FOIA requests. These exceptions range from national security to medical confidentiality and trade secrets. Agencies and the public are familiar with FOIA and the law has been reviewed and revisited by Congress over its 20 year history.

Contrary to some of the provision's critics, FOIA is not a rough, meat axe approach by any means. While concerns about medical confidentiality and trade secret continue to be raised as a general issue, there have been few if any specific examples demonstrating why FOIA does not sufficiently protect privacy or trade secrets. FOIA has been an effective means of providing information to the public in the past and has protected these interests. Indeed, FOIA has been generally criticized in the past by many who have attempted to use it as being a long and tedious process to gain access to information.

Despite efforts to attempt to either repeal or amend or suspend last year's requirement, the sponsors of the provision have encouraged the scientific/university community to work within the OMB process and focus on identifying specific concerns with the proposed revision. Compared to detailed legislation, the OMB process provides the scientific community with a far-more flexible forum to address many of the technical issues which have been raised.

Several criticisms that have been raised about the new law are addressed specifically below:

1/ Provision was included in a 4,000 page bill in the middle of the night.
Response: Provision was worked out over several months. Ultimately language was agreed to by House and Senate appropriators and OMB. OMB actually drafted the language which was included in the Treasury bill. The Treasury bill was later rolled into the omnibus bill after the Senate was unable to pass it separately due to procedural delays.

2/ Provision would require disclosure of sensitive medical, confidential or trade secret information.
Response: FOIA currently applies to a significant amount of sensitive data and research that is conducted directly by agencies. No rationale has been offered as to why FOIA provides insufficient protection when similar research is conducted indirectly by federal grant. Believe that FOIA adequately addresses these interests through current exceptions for medical privacy, confidential information and trade secrets. (Such exceptions are found at 5 U.S.C. Sec. 552 (4) and (6) among others).

3/ Provision would be very costly and not reimburse university/researcher in question for cost of collecting and disclosing data.
Response: Provision provides for reasonable cost reimbursement. Believe OMB proposed revision attempts to ensure adequate reimbursement.

4 / Provision does not define what "data" is for purposes of FOIA request.
Response: Issue of what is "data" or when "data" should be disclosed is a legitimate one. Even though OMB's current Circular provides federal agencies with the right to access research data if they chose to prior to the passage of this new law, federal agencies have rarely exercised this right and the current Circular does not define "data". This is something that will need to be addressed as OMB proceeds. We believe OMB should provide general guidance to the Agencies in defining data to include all information that would be necessary to verify and replicate the original results and to ensure that the results are consistent with the data collected. Federal agencies would then have significant discretion to tailor definitions according to the type of research conducted through their various grants/awards.

5/ Data may be prematurely disclosed and compromise potential commercial use of the research.
OMB has restricted its proposed revision to "published" data. Believe that "published" is a question of timing and addresses much of the concerns that have been raised about "prematurely" releasing data or compromising potential commercial end use of the research. There is no need to obtain pre-published data unless the Federal government uses that data in formulating rules or policy. OMB will probably have to define specifically what is meant by "published".

6/ The provision will trigger frivolous requests by harassing parties who may oppose the kind of research being conducted (i.e. animal testing)
Response: Federal agencies will have discretion in processing FOIA claims. This may or may not be a real problem. If it is, again, believe the OMB process and agency discretion is best means available to address it.

7/ Provision may have chilling effect on joint partnerships because of potential disclosure.
Response: Many joint partnerships are exempt by law independently by the Technology Transfer Act. FOIA also exempts privileged and confidential and trade secrets information that would be of concern to a joint partnership. In addition, OMB's reference to "published" data similarly addresses concerns with patent protection and commercial use.

Today's Family

Issue 3 NO 2 MAY 25 , 1999

A Publication By U.S. Family Network

H.R. 1032 – The Firearms Heritage Protection Act of 1999

Sponsor: Rep. Barr

Original Co-sponsors: Reps. Barcia, Bass, Blunt, Boucher, Burton, Collins (Ga.), Emerson, Goode, Hall (Tex.), Pickering, Sweeney, Young, Norwood, Chambliss, Isakson, Chenoweth, Hayworth, Skeen, Stearns, Latham, Watkins, Linder, Tancredo, Hefley, DeLay

Additional Cosponsors (as of 3/15): Saxton, Baker, Jones, Bachus, Riley, Deal, Doolittle, Tiahrt

- This bill will prevent state or federal civil actions from being brought or continued against manufacturers, dealers, distributors or importers of firearms and ammunition products in interstate commerce for damages resulting from the criminal or unlawful misuse of their products by others. In other words, law-abiding companies will not be sued for the unlawful actions of criminals or others they cannot control.

- The lawsuits against the gun manufacturers were originated and are supported by a small group of trial lawyers and social activists. Their goal is to either bankrupt the firearms industry or to force them to accept a legislative consent decree severely restricting private gun ownership.

  Some of these suits allege that firearms could be made "safer" through the incorporation of various mechanical devices, none of which is a substitute for proper safety training. Others allege that the firearms industry as a whole is so willfully careless in its sales practices (despite the required federal licensing and record-keeping requirements at the manufacturing, distributing, and retail levels) that firearms inevitably find their way into criminal hands. Under either theory, the plaintiff cities seek compensation for the cities' costs of providing police and medical services for firearms-related injuries.

- These suits are unprecedented. In only two cases have suits involving defectless firearms succeeded; one of those decisions was overturned by a state legislature and the other is currently under appeal. Numerous other suits have been dismissed: "The mere fact that a product is capable of being misused to criminal ends does not render the product defective."—*Armijo v. Ex Cam., Inc 656 F. Supp. 771, 773 (D. N.M. 1987).*

- The bill would <u>not</u> prevent legitimate product liability suits against the firearms industry. The legislation is narrowly crafted to protect manufacturers from liability only in cases of third party criminal misuse of a firearm or ammunition product. A person who is injured by the malfunction of a defective firearm or ammunition product would still have a cause of action.

- Plaintiffs' attorney John Coale has suggested other industries as future targets: "... we are interested in taking a close look at the exorbitant prices of prescription drugs for the elderly, for example. Unless the courts reject our approach, we will continue to utilize it to tackle industry bullies." (*Washington Post*, 1/31/99)

- Light aircraft manufacturers, charitable volunteers, food donors, and Amtrak have all received similar federal protection from destructive litigation in the recent past.

- States have taken action as well. Georgia recently enacted a law which prohibited these types of suits against gun and ammunition manufacturers by municipalities in Georgia. Related legislation is being considered in Texas, South Carolina, Oklahoma, Florida, Alabama, Louisiana, South Dakota, and Wyoming.

Today's Family

A Publication By U.S. Family Network

Issue 3 NO 3 June 1 , 1999

The CRA, Bigger Than General Motors and in Need of Reform

Beginning as a minor program in 1977, today the cumulative CRA credit allocations top **$1.05 trillion**. The bulk of these allocations have occurred in the last six years under Bill Clinton's presidency. In fact, in 1998 alone, CRA commitments amounted to a staggering **$694 billion**.

$694 billion is more than...

...the Gross Domestic Product of Canada, which was only $658 billion in 1997.

...the combined assets of the big three American automakers (GM, Ford, and Chrysler), which totaled only $569.4 billion in 1997.

...the <u>total</u> federal discretionary budget, which is $538 billion for fiscal year 2000.

$9 Billion in Cash

While the Community Reinvestment Act focused on lending and did not contemplate that banks would give protesting groups cash, the CRA groups themselves report that more than $9 billion in cash payments have been made or pledged by banks as a result of CRA. These funds flow to community groups and there is no public record of who gets the money or how it is spent.

The CRA Amendments in the Senate Banking Committee Financial Modernization bill

1. <u>Making CRA examinations meaningful</u>. It does not seem unreasonable to require protesters alleging that a bank with a longstanding record of CRA compliance is not meeting the requirements of law to present some supporting evidence to back up their claim. Our bill creates a <u>rebuttable presumption</u> that a bank is in compliance with the CRA if for the past three years it has earned a "satisfactory" or better rating. **This is not a safe harbor as some opponents have claimed.** Any person can present evidence of the bank's CRA noncompliance, but it must be substantial verifiable evidence. The bank regulators may then decide whether to deny a bank's application.

SKIMMING FROM CRA LOANS: HOW IT REALLY WORKS

Bruce Marks, the head of the Neighborhood Assistance Corporation of America (NACA), calls himself "an urban terrorist." His victims are the neighborhoods he pretends to help. In the name of the Community Reinvestment Act (CRA), Mr. Marks is building a lucrative empire by skimming funds from loans intended for local communities. The activities of such "entrepreneurs" exemplify how CRA is being abused today.

In 1991, the FDIC was looking for a buyer for the failed Bank of New England. Fleet Financial Group stepped forward. Bruce Marks protested the deal, claiming that Fleet was a "loan shark" and "racist." Nevertheless, the regulators approved the merger.

Marks did not give up. He continued to conduct what the Boston Globe called, "a relentless, four-year campaign of harassment against Providence-based Fleet and its chief executive, Terrence Murray."

In 1994, engaged in seeking approval from the regulators to buy Sterling Bancshares, of Waltham Massachusetts, Fleet entered into a deal with Bruce Marks that paid NACA $1.4 million. In exchange, Marks signed an agreement with Fleet that he would withdraw his regulatory protests against Fleet and not file any new ones. In fact, Marks sent a letter to the Federal Reserve Board praising Fleet. Fleet also agreed to give Marks $200,000 for startup costs for NACA. In return, Marks agreed to destroy his computer data base -- which he had used to generate lawsuits -- and to stop his attacks on Fleet.

By 1994, the budget of Marks' organization had grown to $450,000, from $250,000 in 1992. The new funding further tripled the budget, and, as a result, Marks was able to expand his operations from the Boston area to six states, stretching from Massachusetts to Virginia. Soon after the deal with Fleet, raises were awarded to Marks' entire staff.

The principal avenue for funding NACA comes from special loan arrangements included in his agreements with banks. In the Fleet case, Marks was given responsibility for a $140 million loan program. Not all of the money would end up going to low-income borrowers, however. NACA took a cut of the money in fees for facilitating the loans. Prior to the Fleet deal, Marks arranged for his organization to supervise a similar, $35 million loan program for Shawmut Bank. And last year, 1998, NACA won its biggest prize to date, a $750 million loan program with NationsBank/Bank of America. Overall, Marks has signed agreements with several big banks, including First Union, Mellon Bank, BankBoston, and Riggs Bank. According to NACA's web page, "NACA has over $3 billion in mortgage funds to be administered throughout the country." All of this is other people's money.

First National Bank - Rogers, Arkansas
In March 1998, First National Bank received an **overall "Satisfactory"** CRA rating but a **"Needs to Improve"** on the investment portion of the examination. Despite the fact that the bank received a **"high satisfactory"** on its community service and lending, the OCC advised the bank that it could improve its rating by contributing cash to community groups or forming a Community Development Corporation.

Household International
On April 20, 1998, Household International filed an application with the OTS to merge with Beneficial Corporation. Household is headquartered in Prospect Heights, Illinois, and has depository institutions in **Illinois, Florida, and Delaware.** On May 11, 1998, Matthew Lee (a professional protester) with Inner City Press/Community on the Move of **Brooklyn**, NY filed a protest. **Inner City Press had no operations where the banks were located.** Concerned about a prolonged process, Household signed an agreement with Inner City Press. As part of the agreement, Household agreed to pay cash to Inner City Press.

The Mer Rouge State Bank - Mer Rouge, Louisiana
This bank, founded in 1903, has 13 employees to serve a town of 1200 people. Its assets are about $30 million, mostly in farm related loans. According to Joe A. Davenport, the Chairman and CEO of the bank, "Prior to the CRA regulation being imposed . . . it has been a policy to: 1) Ascertain the Community Credit Needs, 2) Market the type of credit offered and to extend that credit when ever possible and 3) always be concerned with community development." Mr. Davenport points out that, "With such a limited staff such as ours it is a tremendous burden to keep up with the current regulation demand."

Iowa State Bank - Oelwein, Iowa
This is a new bank, opened in October 1998. The bank currently has $6 million in loans, with deposits of just under $4 million. As bank president Donald L. Frazer says, "With a loan to deposit ratio of 158%, we are certainly meeting the primary criteria of present CRA rules." Mr. Frazer adds, "The time and effort that is expended to keep CRA files and respond to CRA questionnaires or examiners could be better spent taking care of the needs of our community."

Bank of Halls - Halls, Tennessee
The only CRA inquiries that this small Tennessee bank has received over the last 20 years "have come from regulators and profiteers." As bank president Donald Hogue reports, "You can not believe the number of solicitations we have received from consultants and salespeople offering to help with compliance--for a fee, of course! . . . This banker's nightmare is a salesperson's dream. It serves no useful purpose."

American State Bank - Portland, Oregon
This bank is one of the oldest and most strongly capitalized African-American-owned banks in the West. Bank Chairman and CEO, Venerable F. Booker, notes that, "It is redundant, at best, to impose CRA requirements on banks whose sole purpose is to serve minority citizens. At worst, it compels minority banks to sustain burdensome expenses and administrative costs and subjects banks to a bureaucracy largely unaware of realities of the inner-city marketplace."

CRA Abuse

Billions in Cash

According to John Taylor of the National Community Reinvestment Coalition (NCRC), banks and S&Ls have committed **$9.5 billion** in CRA cash payments or pledges. The NCRC admits that "there may be a few instances of 'greenmailing'" and renounces "this practice as counterproductive to the goal of leveraging capital for underserved communities."
(Testimony of NCRC President John E. Taylor to the House Banking Committee on February 11, 1999)

CRA invites extortion, according to Cornell University Law Professor Jonathon Macey.
"You see really weird things when you look at the Code of federal regulations...like federal regulators are encouraged to leave the room and allowing community groups to negotiate ex parte with bankers in a community reinvestment context...Giving jobs to the top five officials of these communities or shake-down groups is generally high up on the list (of demands). So, <u>what we really have is a bit of old world Sicily brought into the U.S., but legitimized and given the patina of government support.</u>" *(The American Spectator, April 1999)*

How to Make Money from CRA: Get the Woodstock Institute to Represent You
The Woodstock Institute advertises on its web page that its primary activities are "community reinvestment negotiations" and providing "assistance to community groups in working with local banks and merging institutions."

In spring 1998, BancOne and First Chicago declared their plans to merge, announcing a $2 billion CRA commitment to ward off CRA protests. The Woodstock Institute issued a statement that it found this investment insufficient and "inadequately targeted and focused." On June 4, 1998, the Woodstock Institute entered negotiations with the banks regarding CRA commitments. On June 13, 1998, the Woodstock Institute announced a CRA agreement with the banks that established a floor for annual <u>cash payments</u> with 5% increases for each of the next two years.

A Sample of CRA Targets

Bank of America:
To ward off CRA protests to their merger, Nations Bank/Bank of America announced a CRA package of $350 billion over ten years. The plan consisted in part of $25 billion for economic development, including loans and cash payments to community groups.

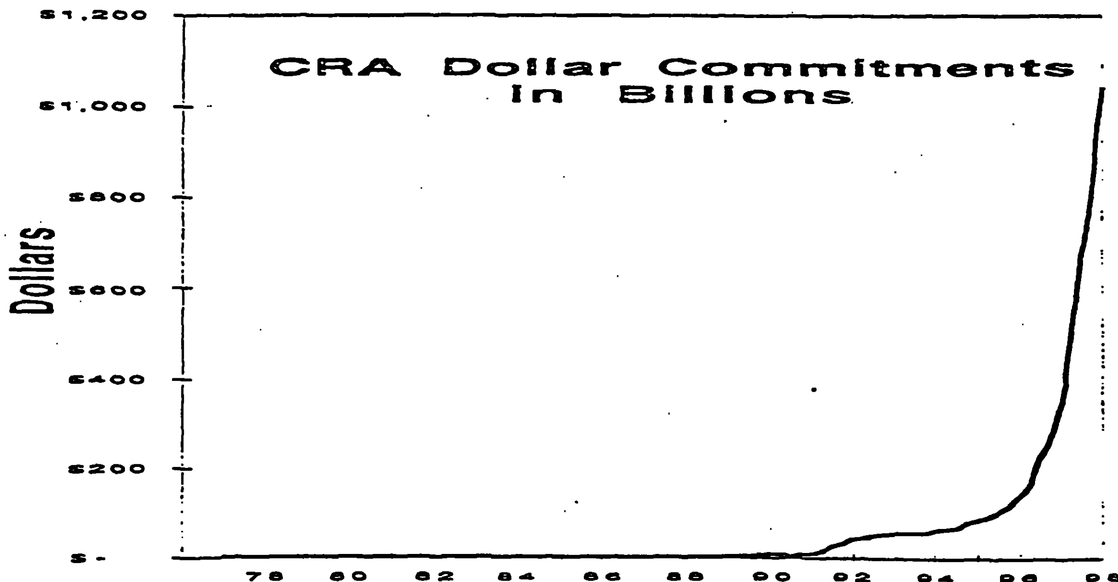
In spite of Nations Bank/Bank of America receiving outstanding CRA grades and this unprecedented investment package, CRA activists threatened to protest the bank saying, "We will close down their branches and ensure they fail in California. This is going to be a street fight and we are prepared to engage in it."

National Community Reinvestment Coalition

CRA Dollar Commitments (in Millions)

Dramatic increase in CRA,
<u>according to the groups themselves</u>:

Year		Annual Dollars		Total Dollars
1998	$	694,204	$	1,050,733
1997	$	221,345	$	356,529
1996	$	49,678	$	135,184
1995	$	26,521	$	85,506
1994	$	6,123	$	58,985
1993	$	10,474	$	52,862
1992	$	33,583	$	42,387
1991	$	2,427	$	8,805
1990	$	1,614	$	6,378
1989	$	2,260	$	4,764
1988	$	1,248	$	2,504
1987	$	357	$	1,256
1986	$	516	$	899
1985	$	73	$	382
1984	$	219	$	309
1983	$	1	$	90
1982	$	6	$	89
1981	$	5	$	83
1980	$	13	$	78
1979	$	15	$	65
1978	$	-	$	50
1977	$	50	$	50
77-91	$	8,805		1%
92-98	$	1,041,928		99%
97-98	$	915,549		87%



Banks and Savings & Loans with Total Assets under $100 Million

(as of September 1998)

	Institutions with Assets under $100 Million not in MSA		Total Institutions	
State	#	Assets ($millions)	#	Assets ($millions)
Alabama	85	$4,491	183	$124,696
Alaska	0	$0	8	$5,335
Arizona	1	$78	47	$39,978
Arkansas	11	$5,606	227	$31,532
California	9	663	387	$772,137
Colorado	83	$3,653	213	$37,850
Connecticut	3	$7	75	$45,640
Delaware	3	$131	39	$125,937
Dist. Of Col.	0	$0	7	$1,527
Florida	30	$1,620	300	$136,547
Georgia	162	$8,456	378	$79,443
Hawaii	1	$14	16	$30,347
Idaho	8	$387	20	$2,198
Illinois	323	$13,128	881	$327,323
Indiana	69	$3,760	253	$87,213
Iowa	322	$14,014	466	$47,710
Kansas	294	$10,193	416	$40,761
Kentucky	154	$8,759	307	$54,387
Louisiana	69	$3,473	189	$52,000
Maine	11	$633	45	$14,808
Maryland	6	$429	151	$54,286
Massachusetts	2	$149	239	$199,862
Michigan	44	$2,597	186	$146,943
Minnesota	300	$10,902	540	$141,258
Mississippi	49	$2,448	112	$26,856
Missouri	221	$10,031	437	$70,813
Montana	72	$2,723	96	$11,154
Nebraska	246	$8,333	333	$39,876
Nevada	3	$142	26	$25,129
New Hampshire	7	$384	38	$22,399
New Jersey	0	$0	153	$135,441
New Mexico	23	$1,243	66	$13,849
New York	29	$1,796	246	$1,288,652
North Carolina	18	$848	118	$607,357
North Dakota	87	$3,086	119	$11,288
Ohio	96	$4,895	369	$309,513
Oklahoma	182	$7,466	327	$42,562
Oregon	10	$520	49	$30,061
Pennsylvania	23	$1,203	318	$258,405
Puerto Rico	0	$0	12	$37,219
Rhode Island	1	$96	13	$86,591
Sourth Carolina	32	$1,705	111	$25,970
Sourth Dakota	71	$2,588	108	$29,066
Tennessee	96	$5,317	232	$102,794
Texas	357	$15,788	859	$227,654
Utah	11	$451	53	$41,928
Vermont	8	$557	26	$8,273
Virginia	27	$1,496	169	$79,114
Washington	14	$500	102	$60,253
West Virginia	40	$2,132	100	$24,325
Wisconsin	157	$7,690	396	$98,764
Wyoming	35	$1,660	56	$9,580
Total:	3905	$178,237	10617	$6,324,604

Source: *Sheshunoff Bank Search*

- Any person or community group can protest any bank application, but if the bank has a longstanding record of compliance, the protester must present evidence to back up their claim.

- If a protester is unwilling or unable to present substantial evidence of non-compliance, no bank with a longstanding record of CRA compliance will have its review process stopped or delayed by the protest.

- "...Your call for Community Reinvestment Act reform that will provide certainty for banks with long-standing satisfactory ratings, while providing for challenges where appropriate, appears reasonable and will not alter bank efforts to meet community credit needs."
(The Bankers Roundtable, letter to the Senate Banking Committee, dated March 17, 1999)

2. **CRA Exemption for Very Small Rural Banks.** The Banking Committee Bill exempts from the CRA very small banks and S&Ls (with total assets less than $100 million) that are located in non-metropolitan areas. The total number of institutions affected by this amendment is approximately 4,000, or about 38 percent of all banks and S&Ls nationwide. The total assets of these institutions combined is only $179 billion, about 2.8 percent of total bank and S&L assets nationwide, and less than the assets of any one of the five largest banks in America. A state-by-state breakdown of such small institutions is attached.

- Most small banks in rural areas have no city -- much less inner city -- as a service area. Not only does the logic of CRA not apply to small, rural banks but the cost of regulation and paperwork imposed by CRA is very costly to these banks.

- No law is needed to require small banks to serve their communities. They would go out of business if they did not. Yet small banks, sometimes with just seven or eight employees, pay the expense of a CRA compliance officer, filing lengthy reports with regulators, undergoing exams, and so forth. "In sum, CRA still imposes a significant regulatory cost on these small institutions with little or no actual benefit, given the community involvement of these institutions in the first place." *(American Bankers Association memo to Members of the United States Senate, dated March 22, 1999).*

- "...If community banks don't reinvest in their communities, their communities will not survive and neither will they. However, the paperwork and regulatory burden associated with CRA takes away from the ability of community banks -- which have small staff and limited resources -- to serve their communities."
(Independent Bankers Association of America letter to the Senate Banking Committee, dated March 9, 1999)

NACA's loan fees are not the end of the skimming of CRA money. Any borrower who gets a mortgage through NACA must attend the organization's "consumer education" program and pay $3,000 into NACA's "Neighborhood Stabilization Fund," paid in increments of $50 per month for five years. The fund ostensibly provides "financial assistance to prevent foreclosures."

Currently, NACA boasts offices in Atlanta, Augusta (Ga.), Baltimore, Boston, Buffalo, Charlotte, Columbia (S.C.), Jacksonville, Lawrence (Mass.), Dallas, Memphis, and Washington, D.C. NACA is in the process of opening offices in Birmingham (Ala.), Fort Lauderdale-West Palm Beach, Houston, Kansas City, Las Vegas, Little Rock, Los Angeles, Miami, New York, Oakland, Oklahoma City, Phoenix, Sacramento, San Antonio, Springfield (Mass.), Tampa-St. Petersburg, and Worcester (Mass.).

Who Is NACA?

Bruce Marks has built his own business empire out of the CRA. Raised in the wealthy suburbs of Scarsdale, N.Y., and Greenwich, Conn., Marks' career goal, even before attending college, was to become a community activist. After graduating from New York University in the 1970's with a master's degree in finance, he worked at the Federal Reserve Bank of New York, where his job involved evaluating bank acquisitions. Marks left his job to work for the Hotel Workers' Union, which later gave him the initial seed money to start his activist organization.

In 1988, the union created the Union Neighborhood Assistance Corporation, which made small loans to union workers. As director of this group, Marks led the campaign against Fleet Financial Group filing lawsuits and staging protests. In October 1993, Marks and his gang disrupted a Harvard alumni event where Terrence Murray, Fleet's top executive, was speaking.

Soon thereafter, Murray and Marks met and reached their three-year agreement. According to the Boston Globe, Marks' tactics include "lawsuits, action, protests, getting arrested."

While targeting banks, Marks has also drawn criticism from urban leaders. Dwight Miller, President of Boston's Community Homeowners Association, referred to Marks as a "Loan Ranger," and explained that, "Aggrandizement and self-oriented goals are not synonymous with community goals."