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SQUIRE, SANDERS & DEMPSEY L.L.P.
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044-0407
Office: +1.202.626.6600
Fax: +1.202.626.6780

Direct Dial: +1.202.626.6656
acohen@ssd.com

May 31, 2001

VIA COURIER

Ms. Alva Smith
Central Enforcement Docket
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 5198

RECEIVED
FEDERAL ELECTION
COMMISSION
MAY 31 3 :PM '01

Dear Ms. Smith:

Enclosed for filing in the above-referenced matter is U.S. Bank National Association's Response to the Complaint. Further to our telephone conversation this morning, the original and three copies are enclosed.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Andrew W. Cohen

AWC/awc

Enclosures

Copy: Donald T. Bucklin, Esq.

BEFORE THE UNITED STATES
FEDERAL ELECTION COMMISSION

In the Matter of:	
Senator Maria Cantwell;	
Maria Cantwell for Senate; and	MUR 5198
U.S. Bank National Association	
Respondents	

U.S. BANK NATIONAL ASSOCIATION'S RESPONSE TO COMPLAINT

Respondent U.S. Bank National Association ("U.S. Bank"), by its attorneys, hereby responds to the Complaint filed against it by the National Legal and Policy Center (the "Center"). As set forth herein, the Complaint is without merit and the Commission should take no action against U.S. Bank in this matter.

Introduction

In its Complaint, the Center alleges that, in violation of the Federal Election Act (the "Act"), U.S. Bank improperly made an under-collateralized loan to U.S. Senate candidate Maria Cantwell during her 2000 campaign. The Complaint further alleges that U.S. Bank made that loan, and another loan, at preferential rates of interest not available to other borrowers.

In bringing these wholly unfounded allegations, the Center relies exclusively on an inaccurate and misleading news report. Aside from that report, the Center provides no information whatsoever to suggest that U.S. Bank either made an inadequately capitalized loan or extended preferential rates of interest. U.S. Bank did neither. Moreover, the Center misrepresents the Schedule C-1 filed by the Maria Cantwell for Senate campaign committee.

That Schedule C-1 discloses that U.S. Bank properly relied not only on a security interest in Ms. Cantwell's personal residence, but also on her substantial net worth, to "assure repayment" of the loan as required by Commission regulations. The Center makes no mention of the Bank's stated reliance on Ms. Cantwell's substantial net worth. A complainant has some obligation to investigate its allegations beyond reliance on a newspaper report, and should not misrepresent an official record.

The actual facts run counter to the Center's unsubstantiated allegations. Those facts demonstrate a long-standing relationship between Ms. Cantwell and U.S. Bank, lines of credit extended at the usual and customary rate of interest, ample assurance of repayment based on Ms. Cantwell's substantial net worth, and written Promissory Notes payable on a fixed date. Those facts – considered in light of Federal Election Commission ("Commission") precedent approving an unsecured line of credit to a candidate under closely analogous circumstances – indisputably establish that U.S. Bank did not violate the Act. Accordingly, the Commission should take no action against U.S. Bank in this matter.

Background

The following facts are taken from the Declaration of Lauren Jassny, Senior Vice President and Credit Risk Officer with U.S. Bank (the "Jassny Declaration," attached as Exhibit A), as well as by supporting documentation from Ms. Cantwell's loan files and other Bank records.

U.S. Bank's relationship with Maria Cantwell dates back to 1995. Senator Cantwell is a long-standing client of U.S. Bank's Private Financial Services Department. That Department provides a variety of services to individuals whose primary incomes and/or liquidity exceed

and whose net worth exceeds These services

include private select checking, money market and savings options, cash management, Visa and debit cards, credit lines and loans, real estate loans, and international banking, trust investment and estate planning services. Senator Cantwell qualified for participation in the Private Financial Services Department by reason of her substantial net worth, and she has traditionally used U.S. Bank for both banking as well as trust services. From 1995 to the present, she has maintained an interest bearing checking account. She also has two campaign accounts with the Bank. Ms. Cantwell also maintained a money market account with the brokerage arm of U.S. Bank, with substantial balances.

A. Ms. Cantwell's $600,000 Line of Credit with U.S. Bank.

In September 1997, several years prior to her candidacy for U.S. Senate, Ms. Cantwell opened a personal $50,000 line of credit with U.S. Bank. This line of credit was underwritten and extended to Ms. Cantwell as an unsecured loan in accordance with then existing underwriting standards, relying on Ms. Cantwell's income and substantial net worth. See Jassny Decl. Ex. 1 (Boarding Data Sheet and Promissory Note). This $50,000 line of credit remained in place until February 1998 when it was increased to $70,000. See Jassny Decl. Ex. 2 (Promissory Note and Disbursement Request and Authorization).

U.S. Bank's files show that, in December 1999, a second deed of trust on Ms. Cantwell's personal residence was taken as security for the $70,000 line of credit, in lieu of stock. See Jassny Decl. Ex. 3 (Deed of Trust, Promissory Note, and supporting documentation). An earlier e-mail memorandum concerning Ms. Cantwell's transaction stated that the Bank was taking the deed of trust out of "an abundance of caution as she qualifies to borrow on an unsecured basis."[1] See Jassny Decl. Ex. 4 (e-mail memo from Stephen Burnett to Carla Haddow, 9/30/99). Ms.

[1] The first deed of trust was financed through Washington Mutual Bank.

Cantwell had purchased her residence in March 1998 for a contract price of $342,000. See Jassny Decl. Ex. 5 (closing statement).

At the time the second deed of trust was taken, Ms. Cantwell's net worth exceeded million, more than sufficient to support an unsecured line of credit for $70,000. See Jassny Decl. Ex. 4. However, by use of the second deed of trust – in support of a home equity loan – Ms. Cantwell could potentially take advantage of certain income tax benefits that other stock collateral did not offer. This second deed of trust was placed at the request of Ms. Cantwell and her accountant. The second deed of trust, therefore, was unnecessary to the underwriting process and was added to benefit the borrower, not the lender.

When the second deed of trust was given in December 1999, the interest rate on the line of credit was reduced to U.S. Bank's Prime Rate. That reduction was "in keeping with [U.S. Bank's] current home equity line programs" for borrowers with Ms. Cantwell's high net worth. See Jassny Decl. Ex. 4. For example, see the "US Bank Credit Rates" for "Home Equity Lines" dated December 2, 1999, attached as Exhibit 6 to the Jassny Declaration.

In July 2000, the $70,000 credit line was increased to $600,000, evidenced by a written Promissory Note, subject to a June 4, 2001 due date as reflected on the Note. See Jassny Decl. Ex.7 (Promissory Note and Disbursement Request and Authorization). The interest rate remained at U.S. Bank's Prime Rate. The loan approval documentation noted the second deed of trust earlier taken by the Bank: "Underwritten as unsecured but a 2nd DOT filed on primary residence at 904 7th Avenue South, Edmonds, WA 98020. Title insurance, appraisal, and verification of homeowner's insurance continue to be waived." See Jassny Decl. Ex. 8 (US Bank Commercial Loans Waiver, Amendment and Modification) (emphasis added).

The increase to $600,000 was recommended by Carla Haddow, the Bank Account Executive, i.e., the lending officer, and approved by James Sheely, the Business Line Manager. The approval also noted that the borrower was in the process of exercising approximately million in stock options and would be depositing additional funds with the Bank. See Jassny Decl. Ex. 8 and Ex. 9 at 6 (Tax Analysis Plus Worksheet).

In accordance with the giving of this second deed of trust, the Schedule C-1, dated January 25, 2001 and filed by the Maria Cantwell for Senate committee, reflected that the line of credit was secured by Ms. Cantwell's personal residence, with an estimated value of $375,000 – a modest increase from an earlier appraisal valuing the property at $345,000. See Schedule C-1; Jassny Decl. Ex. 10 (Loan Information Sheet). In fact, the estimated $375,000 value as of January 25, 2001 was substantially below a formal appraisal of the residence one month later, which placed the value of the property at $525,000. See Jassny Decl. Ex. 11 (appraisal dated February 22, 2001).

On the increase in the credit line to $600,000, sources of repayment were Ms. Cantwell's income and sale of liquid assets (i.e., stocks). See Jassny Decl. Ex. 8 at 2. The "Personal Financial Statement Recap Sheet" showed that Ms. Cantwell's net worth exceeded million as of July 21, 2000. See Jassny Decl. Ex. 9 at 1. Using the Private Financial Services Underwriting Guidelines ("the Underwriting Guidelines"), Ms. Cantwell substantially exceeded the underwriting criteria for an unsecured loan.

The Underwriting Guidelines, which were applied to all loans of the size and type extended to Ms. Cantwell, require the borrower to meet the following criteria:

At the time the line was increased to $600,000, Ms. Cantwell more than met the liquidity test at million – more than times the amount of the loan. She plainly possessed the financial resources to repay the loan from liquid assets. Her Beacon Score was which significantly exceeded the point minimum.[3] As the loan approval document indicates, the increase in the credit line to $600,000 clearly complied both with U.S. Bank Credit Policy and Underwriting Standards and the Underwriting Guidelines. See Ex. 8.

B. Ms. Cantwell's $4 Million Line of Credit with U.S. Bank.

In September 2000, U.S. Bank and Ms. Cantwell entered into a separate loan agreement, for a line of credit in the amount of $4 million. See Jassny Decl. Ex. 12 (letter agreement). A written Promissory Note made the loan subject to a March 15, 2001 due date. See Jassny Decl. Ex. 13 (Promissory Note, Disbursement Request and Authorization, Commercial Security Agreement, and Commercial Pledge and Security Agreement). The interest rate was a variable rate at U.S. Bank's Prime Rate. The loan was made specifically for advertising, media, and promotions associated with Ms. Cantwell's candidacy for U.S. Senate. The loan was

collateralized by shares of stock valued in excess of million as of August 23, 2000. Ms. Cantwell obtained approval from the stock issuer's legal counsel (Real Networks) to liquidate in excess of million worth of stock if necessary – more than sufficient to repay the loan. Liquid collateral, therefore, was times the loan amount; her total liquid net worth was times the loan amount.

C. The Interest Rate on Both Loans.

The interest rate on both loans – U.S. Bank's Prime Rate – was the usual and customary rate for the category of loan involved, i.e., lines of credit to Private Banking clients. In fact, many loans in this same category were made at a lower rate of interest than that charged Ms. Cantwell.

In response to the Complaint, U.S. Bank has undertaken a review of lines of credit extended within the last two years in the same general ranges as Ms. Cantwell's loans, i.e., $500,000 to $1 million and $2 million to $5 million.[4] Of numerous lines of credit in the $500,000 to $1,000,000 range, 20 lines (from Seattle and Bellevue, Washington and Portland, Oregon) with pricing similar to Ms. Cantwell's line of credit are included in a "Pricing Comparison" attached to the Jassny Declaration as Exhibit 14. Nearly all lines of credit in the $2 million to $5 million range (for the same geographic locations) also are included in the comparison (a total of 18 lines). In sum, the Pricing Comparison shows that 95 percent of all the loans were at U.S. Bank's Prime Rate or less.

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[3] The "Beacon Score" is a type of rating, which assesses a borrower's likelihood of repaying a loan. The score, based on data available in a borrower's credit report, measures the relative degree of risk a potential borrower represents to the lender.

[4] The representative lines of credit were taken from all major Pacific Northwest region "teams" at U.S. Bank, and reflect those lines extended to clients similar to Ms. Cantwell, based on the following characteristics: type of borrower (individual or family LLC, and not businesses), collateral (generally unsecured or stock secured), net worth, and liquidity.

The pricing comparison clearly demonstrates that U.S. Bank's Prime Rate, or a lower rate, is customary for lines of credit extended to borrowers evidencing financial characteristics similar to Ms. Cantwell's.

Argument

I. THE LOANS FROM U.S. BANK TO MS. CANTWELL DO NOT VIOLATE THE ACT OR COMMISSION REGULATIONS.

Commission regulations provide that a loan of money by a qualified bank, such as U.S. Bank, is not a contribution by the lending institution if the loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business. 11 C.F.R. § 100.7(b)(11). Under Commission regulations, "lines of credit are considered bank loans, to be treated in the same manner as other loans from lending institutions." 56 Fed. Reg. 67118, 67119 (Dec. 27, 1991); see also 11 C.F.R. § 100.7(b)(11)(i). As explained below, U.S.

Bank extended the subject lines of credit to Ms. Cantwell in compliance with applicable laws and regulations, in the ordinary course of a long-standing business relationship. She received no preferential treatment from the Bank. Accordingly, the Commission should take no action on the Complaint.

A. The Loans to Ms. Cantwell Were Made in the Ordinary Course of Business.

Commission regulations provide that a "loan will be deemed to be made in the ordinary course of business if it [1] bears the usual and customary rate of interest of the lending institution for the category of the loan involved, [2] is made on a basis which assures repayment, [3] is evidenced by a written instrument, and [4] is subject to a due date or amortization schedule." 11 C.F.R. § 100.7(b)(11); see 2 U.S.C. § 431(8)(B)(VII).

Here, all four requirements were met. Both loans to Ms. Cantwell were made in the ordinary course of business – indeed, they were made in the course of the Bank's long-standing relationship with Ms. Cantwell.

First, both loans carried "the usual and customary rate of interest of the lending institution for the category of the loan involved." Private Financial Services clients with substantial net worth – such as Ms. Cantwell – were entitled to loans at U.S. Bank's Prime Rate or lower. See Ex. 4 (9/30/99 e-mail memo stating "I also want to drop [Ms. Cantwell's] rate to Prime. This is in keeping with our current home equity line programs."). The pricing comparison attached to the Jassny Declaration amply establishes this fact.

Furthermore, the Disbursement Request and Authorization signed by Ms. Cantwell for the $600,000 line of credit expressly cautions that she was not receiving the Bank's lowest rate:

LOAN TYPE. This is a Variable Rate (at Lender's Prime Rate. ***This is the rate of interest which Lender from time to time establishes as its Prime Rate and is not, for example, the lowest rate of interest which Lender collects from any borrower or class of borrowers)***, Revolving Line of Credit Loan to an individual for $600,000 due on June 4, 2001. This is a secured renewal of the following described indebtedness: THAT CERTAIN PROMISSORY NOTE EXECUTED BY BORROWER ON DECEMBER 16, 1999, IN THE ORIGINAL AMOUNT OF $70,000.00 AS IT MAY HAVE BEEN AMENDED OR RENEWED FROM TIME TO TIME (THE NOTE).

Jassny Decl. Ex. 7 (emphasis added). The Disbursement Request and Authorization for the $4 million credit line carried the same disclaimer. See Jassny Decl. Ex. 13.

Second, the loans were made on a basis that "assures repayment." A loan is considered to be made on such a basis if, when it is obtained, the lending institution has either (1) perfected a security interest in collateral owned by the candidate receiving the loan (and the fair market value of the collateral is either equal to or greater than the loan amount), or (2) obtained a written agreement whereby the candidate receiving the loan has pledged future receipts as payment on the loan (or a combination of the two). See 11 C.F.R. §§ 100.7(b)(11)(i) and 100.7(b)(11)(i)(A)(l), (B).

The Complaint challenges only the collateralization of the $600,000 line of credit extended to Ms. Cantwell.[6] As the Bank records attached to the Jassny Declaration show, this loan was underwritten by the Bank as unsecured and based on Ms. Cantwell's substantial net worth in excess of million at the time – more than times the line of credit. The second deed of trust that U.S. Bank took on Ms. Cantwell's personal residence, which the Bank perfected as a security interest, partially collateralized the $600,000 line of credit. See Jassny Decl. Ex. 10.

The fact that the $600,000 loan was only partially secured does not adversely affect Ms. Cantwell or the Bank, as the Complaint misleadingly and erroneously suggests. Rather, Commission regulations provide an alternative means for a loan to satisfy the "assures repayment" requirement. Those regulations expressly require the Commission, in the absence of a perfected security interest or pledge of future receipts, to "consider the totality of the circumstances on a case-by-case basis in determining whether a loan was made on a basis which assures repayment." 11 C.F.R. § 100.7(b)(11)(ii).

As the Commission explained in promulgating the "totality of the circumstances on a case-by-case basis" regulation:

> Paragraphs (b)(11)(i)(A) and (B) [i.e., addressing security interests and pledges of future receipts] provide avenues that, if followed, would clearly meet the "assurance of repayment" standard. Paragraph (b)(11)(ii) leaves open the possibility that other approaches, such as loans guaranteed in whole or in part by the borrower's signature, which are not specified in the rules, will also be found to have met this standard in specific cases.

Explanation and Justification, Loans from Lending Institutions to Candidates and Political Committees, 56 Fed. Reg. 67118, 67119 (December 27, 1991) (emphasis added).

Here, the Bank properly approved the increase in the line of credit to $600,000, as partially secured and guaranteed by Ms. Cantwell's signature, based on the totality of the circumstances. As the loan file explains:

> Recommend an immediate increase in existing revolving line of credit from $70M to $600M to fund media campaign next week. Maria is on an unpaid leave of absence from her position as Senior Vice President of Real Networks. She is running for a U.S. Senate seat. . . . Upon her election to the U.S. Senate, her leave will be terminated. The line originated 9/97 for $50M for business investments. Other than to increase commitment by $530M, there will be no other changes. Current pricing will continue to be Prime + 0%, no loan fee. Interest only monthly, all due at maturity, 6/4/01. Underwritten as unsecured but a 2nd DOT

[6] As set forth supra, the $4 million line of credit was collateralized by stock valued in excess of million.

> filed on primary residence at 904 7th Avenue South, Edmonds, WA 98020. Title insurance, appraisal and verification of homeowner's insurance continue to be waived. 30 day payout requirement waived based on collateral pledged.
>
> Maria is exercising some of her stock options with next week (August 1) and will bring in the funds for deposit. We will most likely have a minimum of of Maria's funds on deposit by year end. . . .

Jassny Decl. Ex. 8 (emphasis added). It is clear, therefore, that in increasing the existing credit line, the Bank considered the circumstances of its long-standing relationship with Ms. Cantwell, including her substantial assets and ability to repay, and showed her no preferential treatment. The financial analysis attached to the loan approval shows her net worth to exceed million – or more than times the amount of the loan. She was in the process of exercising an additional million worth of stock options. Her total liquid assets exceeded her total liabilities by over percent. See Jassny Decl. Ex. 9. With this substantial liquid net worth it is patently absurd for the Center to suggest that the Bank lacked access to sufficient assets to assure repayment of the loan.

Although the Complaint purports to reference controlling regulations, and quotes from the Commission's regulations with respect to the existence of a security interest, reference to the "totality of the circumstances" standard is conspicuously absent. Furthermore, the Complaint completely ignores Box F on Schedule C, which specifically states that "[r]eliance on borrower's net worth" is the basis on which repayment of the loan is assured.

Below, in Section I.B., we discuss Commission precedent squarely establishing that, under the totality of the circumstances present here – including Ms. Cantwell's long-standing relationship with U.S. Bank, her high net worth, and substantial liquidity – the loan was made on a basis that assures repayment.

Third, each loan was evidenced by a written instrument, i.e., a Promissory Note. See Jassny Decl. Exs. 7 and 13.

Fourth, and finally, each Promissory Note made the loan subject to a due date (i.e., June 4, 2001 and March 15, 2001, respectively).

Accordingly, the U.S. Bank loans to Ms. Cantwell were made in the ordinary course of business, and no action on the Complaint is warranted.

B. Commission Precedent Squarely Supports the Loans to Ms. Cantwell.

Commission precedent interpreting and applying the controlling regulation here – 11 C.F.R. § 100.7(b)(11) – fully supports the conclusion that both loans were made to Ms. Cantwell in the ordinary course of business. That precedent also addresses the "totality of the circumstances" standard of 11 C.F.R. § 100.7(b)(11)(ii), and plainly demonstrates that the increase in the existing line of credit to $600,000 was made on a basis that assures repayment.

1. Advisory Opinion 1994-26.

In a case with facts closely analogous to those present here, the Commission concluded that the extension of an unsecured line of credit to a candidate was made in the ordinary course of business – including the determination that the totality of the circumstances satisfied the "assures repayment" standard. That precedent – Commission Advisory Opinion No. 1994-26 (Sept. 26, 1994) ("Opinion 1994-26") – should guide and control the Commission's decision here. A copy of Opinion 1994-26 is attached at Tab B.

Like the present matter, Opinion 1994-26 involved the application of the Act and Commission regulations to the use of funds for a congressional campaign from revolving lines of credit. The borrower had held the lines for several years, and was required to repay on an installment basis at a certain rate of interest. The lines were granted on the basis of the

borrower's credit; he was the sole owner of and no other person was jointly or severally liable on any portion of the accounts. Notably, the lines were not secured by any collateral or pledge of future receipts.

After reviewing the law discussed above, the Commission considered the proposal to use the lines of credit under the "case-by-case option" set forth at 11 C.F.R. § 100.7(b)(11)(ii). In conducting its analysis, the Commission noted that the lines of credit were based on the candidate's personal financial status, and issued "years ago, significantly pre-dating [the candidate's] candidacy by at least five years, and are evidence of a longstanding relationship between the lending entities and [the candidate]." That is also is the case here in that the original $50,000 line of credit was issued in 1997 – long before Ms. Cantwell's candidacy for the U.S. Senate – and is evidence of her longstanding relationship with U.S. Bank.

Moreover, the terms of the agreements – e.g., the interest rates and other provisions for repayment – did "not appear to be out of the ordinary or unduly favorable to" the borrower. Documents that that candidate submitted indicated that the agreements were "standard lines of credit issued by the bank for other customers." The Jassny Declaration and the Pricing Comparison submitted with it clearly and unequivocally establish that the terms of Ms. Cantwell's two lines of credit from U.S. Bank were standard loans for all Private Banking clients with substantial net worth, such as Ms. Cantwell. As the Pricing Comparison shows, 95 percent of representative lines of credit extended to U.S. Bank clients with financial characteristics similar to Ms. Cantwell's were made at U.S. Bank's Prime Rate or lower.

Accordingly, in Opinion 1994-26, the Commission concluded that "based on the pre-existing and longstanding nature of these arrangements, as well as their terms" the lines of credit were extended on a basis that assured repayment, and the candidate's use of the lines did not

violate 11 C.F.R. § 100.7(b)(11). There is no meaningful distinction between the situation presented here and that presented in Opinion 1994-26. Accordingly, the Commission should also find that the Bank violated neither the Act nor Commission regulations in its dealings with Ms. Cantwell, and decline to take action on this matter.

2. First General Counsel's Report in MUR 4311 and MUR 4327.

Additionally, the First General Counsel's Report in MUR 4311 and MUR 4327 (Oct. 3, 1996), which addressed the "totality of the circumstances" standard of 11 C.F.R. § 100.7(b)(11)(ii), also supports the conclusion that the Complaint is without merit and warrants no action. A copy is attached at Tab C.

In MUR 4311/4327, the complainant alleged that the candidate's committee, and the candidate himself, accepted a bank loan in the amount of $15,000 to the candidate, which did not comply with the Commission's regulations regarding such matters. The bank conducted a customary review of the loan documents completed by the borrower, including the financial statement of the candidate and his wife. The bank ran a credit check and evaluated several criteria in relation to the candidate and his wife, concluding that a signed promissory note was a sufficient assurance that the loan would be repaid. Report at 11.

The Commission's General Counsel applied several factors, including those referenced in Opinion 1994-26, in considering whether the totality of the circumstances indicated that the lines of credit would meet the assurance of repayment. Those factors included the borrower's income and net worth, other outstanding debts, the TRW national risk score, the bank's internal underwriting score, homeowner status, good character, and the size of the loan. The General Counsel noted that an evaluation of those factors would have provided the bank "with sufficient evidence of whether it could expect that the loan would be repaid." Id. at 22.

Such an evaluation of Ms. Cantwell's income (anticipated at million from stock options), her substantial net worth (in excess of million), the underwriting analyses and risk score, her residence as security, her impeccable character and reputation, and her long-standing relationship with the Bank more than justify the extension of the partially unsecured line of credit. Indeed, in reaching its decision to increase Ms. Cantwell's line of credit, the Bank conducted the very type of analysis that was considered sufficient to determine assurance of repayment in MUR 4311/4327. That analysis is clearly demonstrated in the Bank records attached to the Jassny Declaration.

In MUR 4311/4327, the General Counsel concluded that there was insufficient evidence to assure repayment of the loan. But that finding was based on factors that are wholly absent here, as well as a failure to provide necessary documentation from the lenders. We have attached substantial documentation and supported the Bank's position on the subject loans.

In MUR 4311/4327, unlike the present case, the loan was obtained with the signature of the candidate's wife; the account was not wholly-owned by the candidate. Id. Here, Ms. Cantwell alone obtained the challenged loans, solely based on her substantial income, net worth and high liquidity.

Additionally, unlike the present case, there was no evidence that the candidate had any prior relationship with the bank; indeed, the candidate's campaign committee depository was maintained at another bank. Id. Not so here; Ms. Cantwell had a long-standing and successful relationship with U.S. Bank. She maintained an interest-bearing checking account with the Bank since 1995, maintained a substantial money market account, utilized the Bank's Trust Department, and has two campaign accounts with the Bank.

Thus, the factors in MUR 4311/4327 that called into question the assurance of repayment are utterly absent here.

Significantly, in MUR 4311/4327, the General Counsel wrote that "[f]or the 'totality of the circumstances' to demonstrate that repayment is assured, Respondents must produce enough information for the Commission to be able to exercise its own judgment as to the propriety of the loan." Id. at 22. Although the bank "provided a copy of the promissory note," it did "not provide[] any documents or other information which demonstrates how consideration of [the lending criteria] supported the loan." Id. at 12. The Commission concluded that the respondents "failed to provide the Commission with enough information with which to evaluate the bank's decision." Id. at 22.

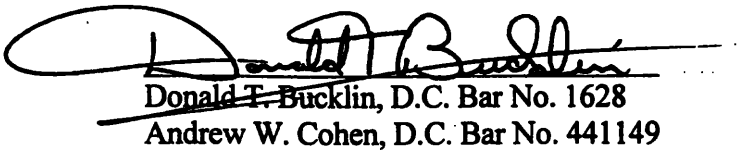
Here, in sharp contrast, through the Jassny Declaration and attached supporting documentation, U.S. Bank unquestionably has produced sufficient information for the Commission to assess the propriety of the loan. Not only has the Bank submitted the Promissory Notes, it has provided detailed internal loan files for Ms. Cantwell, which illuminate the well-supported grounds for the decision to increase the existing credit line.

Conclusion

Reasonable and fair-minded consideration of all the information presented by U.S. Bank amply demonstrates that the loans to Ms Cantwell were made in the ordinary course of business and fully complied with the Act and Commission regulations. That information shows: (1) each loan carried the usual and customary rate of interest for Private Banking clients such as Ms. Cantwell; (2) viewing the "totality of the circumstances," the unsecured portion of the $600,000 line of credit was extended on a basis that assures repayment; (3) each loan was evidenced by a written instrument; and (4) each loan was subject to a due date.

For all the preceding reasons, the Commission should conclude that U.S. Bank's loans to Ms. Cantwell complied with the Act and applicable regulations and take no action on the Complaint.

Respectfully submitted,



Donald T. Bucklin, D.C. Bar No. 1628
Andrew W. Cohen, D.C. Bar No. 441149
SQUIRE, SANDERS & DEMPSEY L.L.P.
1201 Pennsylvania Ave., N.W.
P.O. Box 407
Washington, D.C. 20044-0407
(202) 626-6600

Attorneys for Respondent U.S. National Bank Association

Dated: May 31, 2001

EXHIBIT A

BEFORE THE UNITED STATES
FEDERAL ELECTION COMMISSION

In the Matter of:	
Senator Maria Cantwell;	
Maria Cantwell for Senate; and	MUR 5198
U.S. Bank National Association	
Respondents	

DECLARATION OF LAUREN JASSNY

I, Lauren Jassny, declare under oath as follows:

1. I am a Senior Vice President and Credit Risk Officer with Respondent U.S. Bank National Association (hereinafter "U.S. Bank" or "the Bank"). In this capacity, I serve as a credit manager in the Private Financial Services Department. I am responsible for the quality of bank loan portfolios in a six-state geographic area within the Private Financial Services Department. The Department provides Private Banking services to individuals whose primary incomes and/or liquidity exceed and whose net worth exceeds . These services include private select checking, money market and savings options, cash management, Visa and debit cards, credit lines and loans, real estate loans, and international banking, trust investment and estate planning services.

2. This declaration is based on both my personal knowledge and my review of relevant loan records. I also have read the Complaint filed in this matter. I submit this declaration in support of U.S. Bank's demonstration that no action be taken because U.S. Bank

did not violate either Federal Election Commission regulations or any statutes governing federal elections. U.S. Bank made the loans referenced in the Complaint to Maria Cantwell in the ordinary course of a long-standing and successful customer relationship. The loans were made at interest rates usual and customary for the category of loans involved, they were made on a basis that assured the Bank of repayment, and they were evidenced by formal Promissory Notes payable on a fixed date. The loans at issue met or exceeded the Bank's existing underwriting standards to which all loans are measured. No preferential treatment was provided to Ms. Cantwell.

3. The Bank's relationship with Ms. Cantwell dates back to 1995. She has traditionally used U.S. Bank for banking as well as trust services. From 1995 to the present, she has maintained an interest bearing checking account. She also has two campaign accounts with the Bank. Ms. Cantwell also maintained a money market account with the brokerage arm of U.S. Bank, with substantial balances. In all of our dealings with Ms. Cantwell, all obligations have been met.

4. The $600,000 line of credit referenced in the Complaint originated in September 1997 as a $50,000 line of credit to Ms. Cantwell personally. This preceded her candidacy for the U.S. Senate by several years. The line of credit was underwritten and extended to Ms. Cantwell as an unsecured loan based upon then existing underwriting standards and with reliance on Ms. Cantwell's income and substantial net worth. See Ex. 1. This $50,000 line of credit remained in place until February 1998 when it was increased to $70,000. See Ex. 2.

5. In December 1999, the loan files reflect that a second deed of trust on Ms. Cantwell's personal residence was taken as security for this line of credit, in lieu of stock. See Ex. 3. An earlier e-mail memorandum concerning Ms. Cantwell's transaction stated that the Bank was taking the deed of trust out of "an abundance of caution as she qualifies to borrow on an unsecured basis." See Ex. 4. (The first deed of trust was financed through Washington Mutual Bank.) Ms. Cantwell had purchased this residence in March 1998 for a contract price of $342,000. See Ex. 5.

6. At the time the second deed of trust was taken, Ms. Cantwell's net worth exceeded million, more than sufficient to warrant an unsecured line of credit for $70,000. See Ex. 4. The file also reflects that by giving the second deed of trust – in support of a home equity loan – Ms. Cantwell could potentially take advantage of certain income tax deductions that other stock collateral did not offer. The second deed of trust was unnecessary to the underwriting process and was added to benefit the borrower, not the lender. Also at that time, in December 1999, the interest rate on the loan was reduced to U.S. Bank's Prime Rate "in keeping with our existing home equity line programs" for borrowers with Ms. Cantwell's high net worth. See Ex. 4. For example, see the attached "US Bank Credit Rates" for "Home Equity Lines" dated December 2, 1999, attached as Exhibit 6.

7. In July 2000, the above-referenced $70,000 line of credit was increased to $600,000, evidenced by a written Promissory Note subject to a June 4, 2001 due date as reflected on the Note. See Ex. 7. The interest rate remained at U.S. Bank's Prime Rate. The loan approval document states: "Underwritten as unsecured but a 2nd DOT filed on primary residence

at 904 7th Avenue South, Edmonds, WA 98020. Title insurance, appraisal, and verification of homeowner's insurance continue to be waived." See Ex. 8 (emphasis added).

8. The increase to $600,000 was recommended by Carla Haddow, the Bank Account Executive, i.e., the lending officer, and approved by James Sheeley, the Business Line Manager. The approval also noted that the borrower was in the process of exercising approximately ... million in stock options and would be depositing additional funds with the Bank. See Ex. 8 and Ex. 9 at 6.

9. In accordance with the giving of this second deed of trust, the Schedule C-1 later filed by the Maria Cantwell for Senate committee reflected that the line of credit was secured by Ms. Cantwell's personal residence, with an estimated value of $375,000 – a modest increase from an earlier appraisal valuing the property at $345,000. See Ex. 10; Schedule C-1. In fact, the estimated $375,000 value was substantially below the appraised value of the residence as of February 22, 2001, which placed the value of the property at $525,000. See Ex. 11.

10. In underwriting the credit line increase to $600,000 as unsecured, the Bank relied upon the substantial net worth of Ms. Cantwell. Sources of repayment were her income and sale of liquid assets (i.e., stocks). The "Personal Financial Statement Recap Sheet" showed that Ms. Cantwell's net worth exceeded million as of July 21, 2000. See Ex. 9. Using the Private Financial Services Underwriting Guidelines, Ms. Cantwell substantially exceeded the underwriting criteria for an unsecured loan.

11. The above-referenced Underwriting Guidelines, which were applied to all loans of this size and type, require that the following criteria be met:

At the time the line was increased to $600,000, Ms. Cantwell met the liquidity test at million. Her Beacon Score was which significantly exceeded the point minimum.[2] The loan approval document clearly indicates that the increase complied both with U.S. Bank Credit Policy and Underwriting Standards as well as the applicable Underwriting Guidelines. See Ex. 8. Repayment of this loan was assured based upon Ms. Cantwell's high net worth, including liquid assets valued at more than times the amount of the loan. Ms. Cantwell, therefore, had the financial resources to repay the loan from liquid assets.

12. In September 2000, U.S. Bank and Ms. Cantwell entered into a separate loan agreement in the amount of $4 million. See Ex. 12. A written Promissory Note made the loan subject to a March 15, 2001 due date. See Ex. 13. The interest rate was a variable rate at U.S.

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[2] The "Beacon Score" is a type of rating, which assesses a borrower's likelihood of repaying a loan. The score, based on data available in a borrower's credit report, measures the relative degree of risk a potential borrower represents to the lender.

Bank's Prime Rate. The loan was made specifically for advertising, media, and promotions associated with her candidacy for U.S. Senate. The loan was collateralized by shares of stock valued in excess of million as of August 23, 2000. Liquid collateral, therefore, was times the loan amount; total liquid net worth was times the loan amount. Ms. Cantwell obtained approval from the stock issuer's legal counsel (RealNetworks) to liquidate in excess of million worth of stock if necessary – more than sufficient to repay the loan. A detailed analysis of the sufficiency of the collateral was part of the underwriting process of this loan.

13. The interest rate on both loans – U.S. Bank's Prime Rate – was the usual and customary rate for the category of loan involved. In fact, many loans in this same category were made at a lower rate of interest than that charged Ms. Cantwell. A "Pricing Comparison" of lines of credit made within the last two years in the same general ranges as Ms. Cantwell's loans, i.e., $500,000 to $1 million and $2 million to $5 million, is attached as Exhibit 14.[3] Of numerous lines of credit in the $500,000 to $1,000,000 range, 20 lines (from Seattle and Bellevue, Washington and Portland, Oregon) with pricing similar to Ms. Cantwell's line of credit are included. Nearly all lines of credit in the $2 million to $5 million range (for the same geographic locations) also are included in the comparison (a total of 18 lines). In sum, the Pricing Comparison shows that 95 percent of all the loans were at U.S. Bank's Prime Rate or less.

[3] The representative lines of credit were taken from all major Pacific Northwest region "teams" at U.S. Bank, and reflect those lines extended to clients similar to Ms. Cantwell, based on the following characteristics: type of borrower (individual or family LLC, and not businesses), collateral (generally unsecured or stock secured), net worth, and liquidity.

14.

Overall, therefore, 36 out of the 38 lines shown, or 95%, were at or below U.S. Bank's Prime Rate. The pricing comparison clearly demonstrates that U.S. Bank's Prime Rate, or a lower rate, is customary for lines of credit extended to borrowers evidencing financial characteristics similar to Ms. Cantwell's.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Lauren Jassny

Sworn in before me this
30th day of May 2001.

Notary Public

TIMOTHY S STUDLACK
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
8-19-04

BEFORE THE UNITED STATES
FEDERAL ELECTION COMMISSION

In the Matter of:	
Senator Maria Cantwell;	
Maria Cantwell for Senate; and	MUR 5198
U.S. Bank National Association	
Respondents	

EXHIBITS TO DECLARATION OF LAUREN JASSNY

(REDACTED)

EXHIBIT B

FEC Advisory Opinions, SEPTEMBER 26, 1994

SEPTEMBER 26, 1994

OPINION-NO: 1994-26

REQUESTOR-NAME: SCOTT DOUGLAS CUNNINGHAM

ADDRESS: SCOTT DOUGLAS CUNNINGHAM CAMPAIGN COMMITTEE
4917 EVERGREEN
BELLAIRE, TX 77401

BODY:

DEAR MR. CUNNINGHAM:

THIS RESPONDS TO YOUR LETTERS DATED JULY 18 AND JULY 21, 1994, AS SUPPLEMENTED BY INFORMATIONAL LETTERS, REQUESTING AN ADVISORY OPINION CONCERNING THE APPLICATION OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED ("THE ACT"), AND COMMISSION REGULATIONS TO THE USE OF FUNDS FOR YOUR CAMPAIGN FROM REVOLVING LINES OF CREDIT HELD BY YOU FOR A NUMBER OF YEARS.

YOU ARE A HOUSE CANDIDATE FROM THE 22ND DISTRICT OF TEXAS. YOU FILED AS A CANDIDATE ON JANUARY 18, 1994. BETWEEN 1985 AND 1989, YOU OPENED LINES OF CREDIT WITH TWO BANKS AND ANOTHER LENDING ENTITY. FOR THE PAST THREE TO FOUR YEARS, THE LINES HAVE BEEN AT A LEVEL OF $20,000 EACH, AND THEY REMAIN AT THAT LEVEL. YOU ANTICIPATE MAKING DRAWS ON THESE LINES UP TO $50,000 TO COVER EXPENDITURES FOR GRAPHICS, PRINTING, ADVERTISING, AND OTHER CAMPAIGN-RELATED EXPENSES. YOU PLAN TO MAKE DRAWS DURING AUGUST, SEPTEMBER, AND OCTOBER, 1994, IN INCREMENTS OF APPROXIMATELY $5,000.

THE LINES OF CREDIT WERE OPENED WITH (1) FIRST REPUBLIC BANK, WHICH BECAME NCNB, AND IS NOW NATIONSBANK, (2) CITIBANK READY CREDIT, AND (3) SECURITY PACIFIC EXECUTIVE/PROFESSIONAL SERVICES, WHICH IS A BANKAMERICA COMPANY. THE AGREEMENTS REQUIRE YOU TO REPAY THE LOAN ON AN INSTALLMENT BASIS AT A CERTAIN RATE OF INTEREST. YOU STATE THAT THE REPAYMENT TERMS FOR EACH ARE BASED UPON QUARTERLY INTEREST RATES OF ROUGHLY THREE PERCENT OR AN ANNUAL RATE OF 12 PERCENT OF THE OUTSTANDING PRINCIPAL BALANCE. YOU STATE THAT ANNUAL RATE IS BASED ON AVERAGE 90 DAY TREASURY BILL FLOATING RATES SO THE ACTUAL QUARTERLY RATE MAY VARY PLUS OR MINUS HALF A PERCENT.

THE LINES OF CREDIT WERE SIGNATURE LINES GRANTED ON THE BASIS OF YOUR CREDIT. YOU ARE THE SOLE OWNER OF THE LINE OF CREDIT ACCOUNTS AND NO OTHER PERSON IS JOINTLY OR SEVERALLY LIABLE WITH YOU ON ANY PORTION OF THE ACCOUNTS. THE SOURCE OF FUNDS FOR REPAYMENT OF THE LINES HAS BEEN AND CONTINUES TO BE PERSONAL INCOME DERIVED FROM YOUR LAW PRACTICE. YOU HAVE NEVER USED THE LINES PREVIOUSLY FOR CAMPAIGN PURPOSES, AND YOU HAVE NOT USED THE LINES SINCE

THE BEGINNING OF THE CAMPAIGN.

YOU WISH TO KNOW WHETHER BORROWING FUNDS ON THE FOREGOING SIGNATURE LINE OF CREDIT "WHERE THERE EXISTS AN EXECUTED LOAN AGREEMENT DOCUMENTING AN OBLIGATION TO REPAY ON A FIXED INSTALLMENT BASIS WITH INTEREST" ENTAILS A METHOD THAT ASSURES REPAYMENT WITHIN 11 CFR **100.7(B)(11)(II)**. YOUR INQUIRY MAY BE CHARACTERIZED MORE COMPLETELY AS WHETHER YOU MAY DRAW ON THESE LINES OF CREDIT FOR CAMPAIGN PURPOSES AND HOW SUCH DRAWS SHOULD BE DISCLOSED.

COMMISSION REGULATIONS PROVIDE THAT ANY LOAN OF MONEY BY A STATE BANK, A FEDERALLY CHARTERED DEPOSITORY INSTITUTION, OR A DEPOSITORY INSTITUTION WHOSE DEPOSITS OR ACCOUNTS ARE INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION IS NOT A CONTRIBUTION BY THE LENDING INSTITUTION IF THE LOAN IS MADE IN ACCORDANCE WITH APPLICABLE BANKING LAWS AND REGULATIONS AND IS MADE IN THE ORDINARY COURSE OF BUSINESS.

1/ A LOAN WILL BE DEEMED TO BE MADE IN THE ORDINARY COURSE OF BUSINESS IF IT BEARS THE USUAL AND CUSTOMARY RATE OF INTEREST OF THE LENDING INSTITUTION FOR THE CATEGORY OF LOAN INVOLVED, IS MADE ON A BASIS WHICH ASSURES REPAYMENT, IS EVIDENCED BY A WRITTEN INSTRUMENT, AND IS SUBJECT TO A DUE DATE OR AMORTIZATION SCHEDULE. 11 CFR 100.7(B)(11). SEE 2 U.S.C. '431(8)(B)(VII).

COMMISSION REGULATIONS SPECIFY TWO SOURCES THAT WILL MEET THE COMMISSION'S STANDARD FOR ASSURANCE OF REPAYMENT. THESE ARE: TRADITIONAL COLLATERAL, WITH A PERFECTED SECURITY INTEREST; AND OTHER SOURCES OF REPAYMENT, INCLUDING FUTURE INCOME (E.G., PUBLIC FINANCING FUNDS, FUNDRAISING, AND INTEREST INCOME). LOANS WHICH DO NOT MEET THE CRITERIA SET OUT BY THE REGULATIONS FOR THESE TWO SOURCES ARE CONSIDERED ON A CASE-BY-CASE BASIS, BASED ON THE TOTALITY OF THEIR CIRCUMSTANCES, TO DETERMINE WHETHER THEY WERE MADE ON A BASIS WHICH ASSURES REPAYMENT. EXPLANATION AND JUSTIFICATION, REGULATIONS ON LOANS FROM LENDING INSTITUTIONS TO CANDIDATES AND POLITICAL COMMITTEES, 56 FED. REG. 67118, 67119 (DECEMBER 27, 1991); 11 CFR 100.7(B)(11)(I)(A) AND (B), AND (II).

ACCORDING TO THE EXPLANATION AND JUSTIFICATION OF THE APPLICABLE REGULATIONS, THE RULES FOLLOW THE APPROACH THAT "(L)INES OF CREDIT ARE CONSIDERED BANK LOANS, TO BE TREATED IN THE SAME MANNER AS OTHER LOANS FROM LENDING INSTITUTIONS." 56 FED. REG. 67118, 67119 (DECEMBER 27, 1991). SEE ALSO 11 CFR 100.7 (B)(11)(I), 100.8(B)(12)(I), AND 104.3(D)(1). THE LINES OF CREDIT AT ISSUE ARE NOT SECURED BY ANY COLLATERAL. ALTHOUGH YOUR PERSONAL INCOME HAS BEEN THE SOURCE OF REPAYMENT, YOU HAVE NOT MADE OTHER ARRANGEMENTS REQUIRED BY THE REGULATIONS TO ACCOMPANY LOANS MADE ON THE BASIS OF FUTURE RECEIPTS, E.G., THE ESTABLISHMENT OF A SEPARATE ACCOUNT TO ACCESS FUNDS OR AN ASSIGNMENT BY THE CANDIDATE TO THE BANK TO ACCESS FUNDS. SEE 11 CFR 100.7(B)(11)(I)(B) (1)-(5). IN ADDITION, YOUR REQUEST DOES NOT PRESENT A SITUATION OF LINES OF CREDIT PRESENTLY BEING ACQUIRED OR RENEGOTIATED UNDER THESE REGULATIONS.

YOUR PROPOSAL TO USE THESE LINES OF CREDIT MAY BE CONSIDERED UNDER THE CASE-BY-CASE OPTION PROVIDED AT 11 CFR **100.7(B)(11)(II)**. THE COMMISSION NOTES THAT THESE LINES OF CREDIT DO NOT APPEAR TO HAVE BEEN OBTAINED BY YOU FOR THE PURPOSE OF INFLUENCING ANY CANDIDACY OR OTHER POLITICAL PURPOSE. THESE LINES OF CREDIT, BASED ON YOUR PERSONAL FINANCIAL STATUS, WERE ISSUED YEARS AGO, SIGNIFICANTLY PRE-DATING YOUR CANDIDACY BY AT LEAST FIVE YEARS, AND ARE EVIDENCE OF A LONGSTANDING RELATIONSHIP BETWEEN THE LENDING ENTITIES AND YOU. THE TERMS OF THE AGREEMENTS, E.G., THE INTEREST RATES AND OTHER PROVISIONS FOR REPAYMENT (INCLUDING PROVISIONS RELATING TO OVERDUE PAYMENTS, CANCELLATION OF THE LINE BY THE BANK, AND ACCELERATION OF PAYMENTS) DO NOT APPEAR TO BE OUT OF THE ORDINARY OR UNDULY FAVORABLE TO YOU; DOCUMENTS SUBMITTED BY YOU

INDICATE THAT THESE AGREEMENTS ARE STANDARD LINES OF CREDIT ISSUED BY THE BANK FOR OTHER CUSTOMERS. BASED ON THE PRE-EXISTING AND LONGSTANDING NATURE OF THESE ARRANGEMENTS, AS WELL AS THE TERMS, THE COMMISSION CONCLUDES THAT YOU MAY MAKE THE PROPOSED DRAWS FOR THE PURPOSES OF YOUR HOUSE CAMPAIGN FROM THE ENTITIES THAT QUALIFY AS DEPOSITORY INSTITUTIONS UNDER 11 CFR 100.7(B)(11)).

2/ ONE OF THESE LINES IS WITH NATIONSBANK OF TEXAS, WHICH IS A NATIONAL BANK AND AN FDIC-INSURED DEPOSITORY. ANOTHER LINE IS LABELLED CITIBANK READY CREDIT AND IS FROM CITIBANK ITSELF, WHICH IS ALSO A NATIONAL BANK AND FDIC INSURED. THE THIRD LINE PROVIDER, SECURITY PACIFIC EXECUTIVE/PROFESSIONAL SERVICES IS A BANKAMERICA COMPANY AND A DIVISION OF THE BANKAMERICA CORPORATION, WHICH OWNS BANKS AND OTHER SUBSIDIARIES. IT IS AN OPERATING ARM OF THE BANKAMERICA CORPORATION THAT EXTENDS LINES OF CREDIT. FROM THE INFORMATION RECEIVED, IT DOES NOT APPEAR THAT SECURITY PACIFIC EXECUTIVE/PROFESSIONAL SERVICES IS A QUALIFIED DEPOSITORY INSTITUTION. THE COMMISSION CONCLUDES THAT YOU MAY USE THE LINES OF CREDIT FROM THE FIRST TWO INSTITUTIONS.

COMMISSION REGULATIONS SET OUT SPECIFIC RULES FOR THE REPORTING OF BANK LOANS RECEIVED FOR FEDERAL CAMPAIGN PURPOSES, INCLUDING LINES OF CREDIT. THEY REQUIRE THAT, WHEN A CANDIDATE OR POLITICAL COMMITTEE OBTAINS A LOAN, OR ESTABLISHES A LINE OF CREDIT, THE COMMITTEE SHOULD MAKE SEVERAL DETAILED DISCLOSURES ON SCHEDULE C-1: (I) THE DATE AND AMOUNT OF THE LOAN OR LINE OF CREDIT; (II) THE INTEREST RATE AND REPAYMENT SCHEDULE OF THE LOAN OR EACH DRAW ON THE LINE OF CREDIT; (III) THE TYPES AND VALUE OF TRADITIONAL COLLATERAL OR OTHER SOURCES OF REPAYMENT SECURING THE LOAN OR LINE OF CREDIT DESCRIBED IN 11 CFR 100.7(B)(11)(I)(A) OR (B), AND WHETHER THAT SECURITY INTEREST IS PERFECTED; AND (IV) AN EXPLANATION OF THE BASIS OF THE CREDIT ESTABLISHED IF THE BASES IN (III) ARE NOT APPLICABLE. 11 CFR 104.3(D)(1)(I)- (IV). SINCE THE LINES OF CREDIT AT ISSUE WERE NOT OBTAINED FOR CAMPAIGN PURPOSES, YOUR COMMITTEE NEED NOT DISCLOSE THE FOREGOING INFORMATION FOR A LINE UNTIL THE REPORTING PERIOD DURING WHICH THE LINE IS FIRST DRAWN UPON FOR CAMPAIGN PURPOSES. AT THAT POINT, THE COMMITTEE MUST DISCLOSE THE SOURCE OF THE LINE AND THE INFORMATION REQUIRED IN SUBSECTIONS (I) (INCLUDING THE DATE OF THE GRANTING OF THE LINE AND THE FIRST CAMPAIGN DRAW), (II), AND (IV) CITED ABOVE. YOU SHOULD ALSO EXPLAIN THAT THIS LINE WAS TAKEN OUT WELL IN ADVANCE OF THE CAMPAIGN (AS EVIDENCED BY THE DATE OF THE GRANTING OF THE LINE) AND WAS NOT GRANTED OR ALTERED IN ANTICIPATION OF ITS USE FOR OR DURING ANY POLITICAL CAMPAIGN.

3/ SECTION 104.3(D)(1)(V) REQUIRES A CERTIFICATION FROM THE LENDING INSTITUTION THAT THE BORROWER'S RESPONSES TO (I)-(IV) ARE ACCURATE TO THE BEST OF THE LENDER'S KNOWLEDGE, THAT THE LOAN OR LINE OF CREDIT WAS MADE OR ESTABLISHED ON TERMS AND CONDITIONS NO MORE FAVORABLE AT THE TIME THAN THOSE IMPOSED FOR SIMILAR CREDIT GRANTED TO BORROWERS OF COMPARABLE CREDIT WORTHINESS, AND THAT THE INSTITUTION IS AWARE OF THE REQUIREMENT FOR TERMS WHICH ASSURE REPAYMENT. SINCE THE LENDING INSTITUTION WAS NOT EXTENDING A LINE OF CREDIT FOR CAMPAIGN PURPOSES AT THE TIME THE LINE WAS ESTABLISHED, THE LENDING INSTITUTIONS DO NOT NEED TO COMPLY WITH THIS SUBSECTION. AT THE TIME THE LINES WERE ESTABLISHED, YOU AND THE LENDER PRESUMABLY WOULD NOT HAVE CONTEMPLATED THE POSSIBILITY THAT YOU WOULD DRAW UPON THE LINES FOR CAMPAIGN PURPOSES, OR THAT THE REQUIREMENTS OF THE ACT AND REGULATIONS WOULD GOVERN THE ISSUANCE OF THE LINE OF CREDIT.

COMMISSION REGULATIONS REQUIRE THE POLITICAL COMMITTEE TO SUBMIT A COPY OF THE LINE OF CREDIT AGREEMENT WHICH DESCRIBES THE TERMS AND CONDITIONS OF THE LINE WHEN IT FILES THE SCHEDULE C-1 THAT FIRST DISCLOSES DRAWS MADE AGAINST THE LINE FOR CAMPAIGN PURPOSES. YOU SHOULD FILE EITHER THE ORIGINAL AGREEMENT,

WITH ANY UP-TO-DATE AMENDMENTS, OR THE MOST RECENT DOCUMENT CONTAINING ALL THE TERMS (E.G., INTEREST RATES, REPAYMENT, TIME REQUIREMENTS) THAT ARE APPLICABLE AT THE TIME OF THE DRAW. 11 CFR 104.3(D)(2).

THERE ARE CONTINUOUS REPORTING REQUIREMENTS IN CONNECTION WITH THE DRAWS. EACH TIME AN ADDITIONAL DRAW IS MADE ON A LINE OF CREDIT, THIS SHOULD BE REPORTED ON SCHEDULE C-1 AND ON SCHEDULES A AND C. ASSUMING THAT THE TERMS OF THE LINE REMAIN UNCHANGED, THE COMMITTEE NEED NOT PROCEED THROUGH ALL THE REQUIREMENTS OF 11 CFR 104.3(D)(1) CITED ABOVE FOR EACH DRAW, BUT SHOULD INCLUDE THE SOURCE OF THE DRAW AND A NOTATION AS TO WHEN THE SOURCE WAS FIRST DISCLOSED, THE AMOUNT OF THE DRAW, AND THE TOTAL OUTSTANDING BALANCE ON THE LINE. 11 CFR 104.3(D)(3). FOR EACH REPORTING PERIOD IN WHICH THERE IS STILL A BALANCE TO BE PAID ON THE LINE OF CREDIT, THE LINE SHOULD CONTINUE TO BE REPORTED. THE SCHEDULE C SHOULD INDICATE THE TOTAL DRAWN, THE TOTAL REPAID, AND THE REMAINING BALANCE. 2 U.S.C. '434(B)(8); 11 CFR 104.3(D) AND 104.11(A). ADVISORY OPINION 1985-33. IN ADDITION, EACH TIME THE INTEREST RATE OR OTHER REPAYMENT TERM FOR THE LINE IS ALTERED BECAUSE OF THE BANK'S ALTERATION OF ITS STANDARD AGREEMENT WITH ITS LINE OF CREDIT CUSTOMERS, A SCHEDULE C-1 SHOULD BE FILED FOR THAT REPORTING PERIOD. SEE 11 CFR 104.3(D)(1)(II).

4/ REPAYMENTS OF THE DRAWS ON THESE LINES OF CREDIT MUST ORIGINATE FROM CONTRIBUTIONS THAT ARE PERMISSIBLE UNDER THE ACT. 11 CFR 110.1(G). ADVISORY OPINIONS 1987-30 AND 1981-22. IF THE REPAYMENT TO THE BANK COMES FROM YOU, YOUR COMMITTEE MUST REPORT YOUR PAYMENTS TO THE BANK AS IN-KIND CONTRIBUTIONS TO THE COMMITTEE. THIS WOULD ENTAIL DISCLOSING A CONTRIBUTION FROM YOU ON SCHEDULE A, AN EXPENDITURE TO THE LENDER ON SCHEDULE B, AND THE REDUCTION OF THE AMOUNT OWED ON SCHEDULE C. YOUR CONTRIBUTION FROM YOUR PERSONAL FUNDS WOULD NOT BE SUBJECT TO THE ACT'S LIMITS. 11 CFR 110.10(A). ANY DONATIONS YOU RECEIVE FOR THE PURPOSE OF REMITTING FUNDS TO THE LENDER WOULD BE CONTRIBUTIONS SUBJECT TO THE LIMITS AND PROHIBITIONS IN THE ACT. SEE 2 U.S.C. "441A, 441B, 441C, 441E, AND 441F.

THIS RESPONSE CONSTITUTES AN ADVISORY OPINION CONCERNING APPLICATION OF THE ACT, OR REGULATIONS PRESCRIBED BY THE COMMISSION, TO THE SPECIFIC TRANSACTION OR ACTIVITY SET FORTH IN YOUR REQUEST. SEE 2 U.S.C. '437F.

FOR THE COMMISSION,

(SIGNED)

TREVOR POTTER
CHAIRMAN

ENCLOSURES (AO 1987-30, 1985-33, AND 1981-22)

ENDNOTES

1/ WHEN A CANDIDATE RECEIVES A LOAN FOR USE IN CONNECTION WITH HIS OR HER CAMPAIGN, THE CANDIDATE RECEIVES THE LOAN AS AN AGENT OF HIS OR HER AUTHORIZED COMMITTEE. 2 U.S.C. '432(E)(2); 11 CFR 101.2 AND 102.7(D). SUCH LOANS ARE REPORTABLE BY THE COMMITTEE AND ITEMIZABLE AS LOANS FROM THE LENDER TO THE COMMITTEE, RATHER THAN AS LOANS FROM THE CANDIDATE TO THE COMMITTEE. 2

EXHIBIT C

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

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 4311
DATE COMPLAINT FILED: February 21, 1996
DATE OF NOTIFICATION: February 28, 1995
DATE ACTIVATED: April 30, 1996

MUR: 4327
DATE COMPLAINT FILED: March 20, 1996
DATE OF NOTIFICATION March 27, 1996
DATE ACTIVATED: April 30, 1996

STAFF MEMBER: Tony Buckley

COMPLAINANT: The Honorable Bob Filner

RESPONDENTS (MUR 4311): Juan C. Vargas
Vargas for Congress '96 and Deanna Liebergot, as treasurer
Richard D'Ascoli
Ralph Inzunza
The Primacy Group

RESPONDENTS (MUR 4327): Juan C. Vargas
Adrienne D. Vargas
Vargas for Congress '96 and Deanna Liebergot, as treasurer
Bank of Commerce

RELEVANT STATUTES:
2 U.S.C. § 431(2)
2 U.S.C. § 431(8)(A)(i), (ii)
2 U.S.C. § 431(8)(B)(i)
2 U.S.C. § 431(8)(B)(vii)(II)-(III)
2 U.S.C. § 432(e)(1)
2 U.S.C. § 434(a)(1)
2 U.S.C. § 434(a)(4)(A)(ii)
2 U.S.C. § 434(b)(2).
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)

11 C.F.R. § 100.7(a)(1)(i)(C)
11 C.F.R. § 100.7(b)(11)(i)(A)(I), (B)
11 C.F.R. § 101.1(a)
11 C.F.R. § 104.14(d)
11 C.F.R. § 105.1
11 C.F.R. § 110.1(i)(1)
11 C.F.R. § 110.3(d)

INTERNAL REPORTS CHECKED: Disclosure Reports
MUR Index
Advisory Opinion Index

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

Both of these matters were generated by complaints filed by Congressman Bob Filner ("Complainant"), who represents California's 50th congressional district, against his opponent in the 1996 Democratic primary election, San Diego City Councilman Juan Vargas.[1] Both of these matters deal with issues surrounding activity by Mr. Vargas' principal campaign committee, Vargas for Congress '96 ("the Vargas Committee"). Mr. Vargas announced his candidacy for the Democratic nomination shortly after winning re-election to his city council seat.[2]

The complaint in MUR 4311 contains seven separate allegations of illegal activity. The first allegation results from the mention of a poll in an undated page from California Political Week ("CALPEEK").[3] CALPEEK mentioned that "a poll commissioned by Vargas and conducted by [illegible] consultant (Larry Remer) of 480 random, likely Demo voters shows: Vargas

[1] MUR 4311 comprises the initial complaint filed on October 20, 1995, and amendments filed on October 23, 1995 and February 20, 1996. In this report, they are referred to collectively as "the Complaint". MUR 4327 comprises the single complaint filed on March 20, 1996.

[2] Congressman Filner won the primary election, which was held on March 26, 1996.

[3] Nor does the page contain a volume or issue number by which a publication date might be discerned.

41.4%, Filner 32.8% – the rest undecided." Complainant alleges that the Vargas Committee did not report any expenditure for polling for the period September 28 through December 31, 1995, and that the Vargas Committee thus failed to properly report expenditures.

The second allegation involves Ralph Inzunza, whom Complainant identifies as "Councilman Vargas' [former] Chief of Staff, [who] is widely known to be managing the Vargas for Congress campaign." Complainant notes that reports filed by the Vargas Committee do not show Mr. Inzunza as receiving any pay. Complainant states that "[b]ecause the cost of Mr. Inzunza's services are not listed as either a loan to the campaign, or an in-kind contribution, they constitute an illegal contribution." (Emphasis omitted).

Five more allegations revolve around money spent by Mr. Vargas' city council re-election campaign, which spent approximately $69,000 in an uncontested race. Generally, Complainant alleges that The Primacy Group, a political consulting firm which worked for Vargas' city council re-election campaign and then worked for Vargas' congressional campaign, used funds collected for the city council race in connection with the Federal race. Complainant more specifically suggests that both The Primacy Group and Richard D'Ascoli, an employee of Mr. Vargas' city council re-election campaign who then went to work for Vargas' congressional campaign, performed services for Vargas for Congress for which they had been paid by the city council re-election campaign. Complainant has concluded that violations occurred because Mr. D'Ascoli was paid $4,600 for a two-month period working for the city council re-election committee, and was only paid $1,800 for a three-month period working for the Vargas Committee. Likewise with The Primacy Group, Complainant points out that The Primacy Group

was paid $15,000 for the unopposed city council race, but was paid less than $2,500 for the last three months of 1995 by the Vargas Committee for similar services.

Complainant also alleges that Mr. Vargas was a candidate for Federal office sooner than the filing date of his Statement of Candidacy, October 13, 1995, would suggest. Complainant states that on September 20, 1985, the day after Mr. Vargas' re-election to the San Diego City Council, brochures touting his Federal candidacy appeared in the district. Complainant alleges that the cost of this brochure, and of the several full-time staff members who began working for the Vargas Committee around this time, would have caused the Vargas Committee to exceed the $5,000 expenditure mark for candidate status. Complainant further suggests that money from the city council re-election campaign was used to pay for the production of the brochure. Complainant claims that examination of expenditure reports for the city council re-election campaign give a plausible explanation for where funds were obtained for the brochure's production.

The complaint in MUR 4327 alleges two separate violations. First, Complainant alleges that the Vargas Committee, and the candidate himself, accepted an excessive contribution in the form of a bank loan in the amount of $15,000 to the candidate which did not comply with the Commission's regulations regarding such matters. Complainant also suggests that $10,000 reported by the Vargas Committee as coming from the candidate may also derive from an improper bank loan. Additionally, Complainant alleges that the Vargas Committee failed to properly report the receipt of contributions. Complainant makes this conclusion by looking at the amount spent by the campaign on television advertising for the period commencing March 11, 1996, $100,885, and looking at the amount the committee reported as its cash-on-hand

as of March 6, 1996, $56,052.27, and the amount reported in 48-Hour Notices in the intervening period, $18,000, to conclude that the Committee must not have reported all of its receipts.

II. FACTUAL AND LEGAL ANALYSIS

A. Law

Pursuant to 2 U.S.C. § 432(e)(1), each candidate for Federal office shall designate in writing a principal campaign committee within 15 days after becoming a candidate. The term "candidate" means, inter alia, an individual who seeks nomination for election to Federal office. 2 U.S.C. § 431(2). An individual is deemed to seek nomination to Federal office if he has received contributions aggregating in excess of $5,000 or has made expenditures aggregating in excess of $5,000. See 2 U.S.C. § 431(2)(A). A candidate for the House of Representatives must designate his or her principal campaign committee by either filing a Statement of Candidacy with the Commission on FEC Form 2, or by filing the appropriate information with the Clerk of the House of Representatives. See 11 C.F.R. §§ 101.1(a) and 105.1.

Pursuant to 11 C.F.R. § 110.3(d), it is illegal to transfer funds or assets from a candidate's campaign committee or account for a non-Federal election to his or her principal campaign committee or other authorized committee for a Federal election.

Pursuant to 2 U.S.C. § 441a(a)(1)(A), no person shall make a contribution to a candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000. This limitation applies to contributions by spouses of candidates. 11 C.F.R. § 110.1(i)(1). The term "contribution" includes 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, as well as the payment by any person of compensation for the

personal services. 2 U.S.C. § 431(8)(A)(i), (ii). Pursuant to 2 U.S.C. § 441a(f), no political committee shall accept any contribution made in violation of section 441a(a)(1)(A).

The term "contribution" does not include the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee. 2 U.S.C. § 431(8)(B)(i). Nor does the term "contribution" include a loan from a qualifying bank which is made in accordance with applicable law and in the ordinary course of business. 2 U.S.C. § 431(8)(B)(vii), 11 C.F.R. § 100.7(b)(11). A loan is deemed to be made in the ordinary course of business if it meets four criteria: 1) it bears the usual and customary interest rate for the category of loan involved; 2) it is made on a basis which assures repayment; 3) it is evidenced by a written instrument; and 4) it is subject to a due date or amortization schedule. 11 C.F.R. § 100.7(b)(11). A loan is considered to be made on a basis which assures repayment if, when it is obtained, the lending institution has either perfected a security interest in collateral owned by the candidate or political committee receiving the loan, and the fair market value of the collateral is either equal to or greater than the loan amount, or the lending institution has obtained a written agreement whereby the candidate or political committee receiving the loan has pledged future receipts as payment on the loan. See 11 C.F.R. § 100.7(b)(11)(i)(A)(1), (B). If these factors are not present, the Commission can look to the totality of the circumstances on a case-by-case basis to determine whether the loan was made on a basis which assures repayment. 11 C.F.R. § 100.7(b)(11)(ii). Where a loan is concerned, each endorser or guarantor is deemed to have contributed that portion of the total amount for which he or she agreed to be liable in a written agreement. 11 C.F.R. § 100.7(a)(1)(i)(C).

Pursuant to 2 U.S.C. § 434(a)(1), the treasurer of each political committee shall file reports of receipts and disbursements in accordance with certain provisions. Among these provisions is the requirement that the report include the total amount of receipts. See 2 U.S.C. § 434(b)(2). The treasurer is responsible for assuring that the information contained in any such report is accurate. 11 C.F.R. § 104.14(d).

B. Responses to Complaints

1. Responses to complaint in MUR 4311

a. response of Richard D'Ascoli

Richard D'Ascoli worked for Juan Vargas' city council re-election campaign, and then worked for Mr. Vargas' Federal campaign. Mr. D'Ascoli rejects any suggestion that he was paid by the city council campaign for work to be done on the congressional campaign. Specifically, he states that "[u]ntil Mr. Vargas announced his candidacy for the House of Representatives on October 6, 1995, I never performed any work in connection with that candidacy." He makes no effort to address the allegations concerning the discrepancies between the amounts he was paid to work by each committee for his campaign work. Nevertheless, Mr. D'Ascoli states that "Representative Filner's accusation that I was 'illegally paid . . . in advance for work to be performed during [Mr. Vargas'] campaign for Congress' is totally false."

b. response of Ralph Inzunza

Ralph Inzunza served as Councilman Vargas' Chief of Staff until taking a leave of absence on September 22, 1995. He assumed the position of campaign manger for Vargas for Congress on October 6, 1995. Inzunza also denies any wrongdoing. He states that, given the anticipation that Congressman Filner would significantly outspend the Vargas Committee, and

that Mr. Vargas would run a relatively low-budget, grass-roots campaign, he volunteered his services to the Vargas Committee.

c. responses of Larry Remer and The Primacy Group

Larry Remer is the president of The Primacy Group, the political consulting firm which worked for Juan Vargas' city council re-election campaign and for his Federal campaign. He has submitted one response as an individual, and one as president of The Primacy Group.[4] To avoid confusion in the discussion, these two responses are treated as one.

Mr. Remer first addresses the allegation that costs associated with the poll which appeared in CALPEEK were not reported. Remer admits directing the poll, which he states was conducted during the second week of January 1996 by volunteer campaign workers who gleaned the pertinent data from the campaign's data base, and made phone calls to selected voters. Mr. Remer further explains that, to his knowledge, the Vargas Committee incurred no out-of-pocket expenses in connection with the survey and that, therefore, there were no expenses to report in connection with the survey. He states that the survey was conducted during the second week of January 1996, after the reporting period identified by Complainant.

Mr. Remer disputes Complainant's contention that either The Primacy Group or Richard D'Ascoli was paid by the city council committee for work to be for Vargas for Congress. He states that there were indications that Mr. Vargas would face a challenger in his city council re-election race, that the Vargas city council committee prepared for this challenge, and that potential opponents withdrew because, in Mr. Remer's estimation, the Vargas campaign had

[4] This latter response states that it is filed on behalf of Richard D'Ascoli, Ralph Inzunza, Larry Remer, Juan Vargas, Vargas for Congress '96, and Deanna Liebergot, the treasurer of Vargas for Congress.

prepared so well that potential challengers realized their efforts would be futile. Mr. Remer further states the Vargas city council campaign operated similarly in 1993, raising approximately $65,000, resulting in him facing no opposition. He adds that, although there ultimately was no opposition, "there still were contracts to fulfill for services from The Primacy Group and Mr. D'Ascoli for said campaign."

Next, Mr. Remer addresses Mr. Inzunza's activity with the Vargas campaign, and corroborates Inzunza's statement that he volunteered his services to the campaign. Remer states that Inzunza "lives with his father and is living on his savings."

With regard to the issue of the timely filing of the Statement of Candidacy, Mr. Remer states that "[w]hen Councilman Vargas started his Congressional campaign after the Council re-election campaign was over and the election had been held, he established a Congressional Campaign committee in accordance with FEC regulations and hired the Primacy Group, Mr. D'Ascoli and others to work on his behalf." (Emphasis in original). Remer does not specifically address the allegation that the Federal campaign brochure was paid for by the city council campaign.

Neither Mr. Vargas nor the Vargas Committee filed a response with respect to the allegations in the complaint in MUR 4311.

2. Responses to complaint in MUR 4327

a. response of Juan Vargas[5]

Mr. Vargas states that the loan he made to his campaign was made from the proceeds of an unsecured loan, and that the terms of that loan were set forth in a report filed with the Commission by the Vargas Committee on March 14, 1996.[6] Mr. Vargas states that no part of that loan violates any statute or regulation. He further states that, prior to seeking the loan, he spoke with one of the Commission's information specialists, that he stated that he wanted to secure a loan and use the money for the campaign and gave the details of the loan terms, and that he was told that the loan was consistent with Commission regulations.

Regarding Complainant's contention that two additional loans of $5,000 each reported by the Vargas Committee as being made by Juan Vargas were also made with the proceeds of the Bank of Commerce loan, Mr. Vargas states that "there are no such illegal loans. Rep. Filner has provided no facts or authority which would support the conclusion that any illegal loan was made. There is no such fact or legal authority."

Regarding the allegation that the Vargas Committee did not report the receipt of certain funds, Mr. Vargas states that the Vargas Committee "has lawfully reported all sums raised and expended."

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[5] Deanna Liebergot, treasurer of Vargas for Congress, submitted a response in which she incorporates by reference the submission of Mr. Vargas.

[6] Vargas is apparently referring to the Vargas Committee's 1996 12-Day Pre-Primary Report, which included an FEC Schedule C-1 reflecting the loan, and a copy of the promissory note.

b. response of Bank of Commerce

Bank of Commerce ("the Bank") details the circumstances of the making of the loan and argues that the loan was properly made. The Bank states that Mr. Vargas approached it on February 8, 1996 to obtain a loan for $25,000. Vargas informed bank personnel at that time that the purpose of the loan was to provide funds for election advertising in his congressional campaign bid. The Bank further states that Vargas was required to fill out the Bank's standard loan documents, and that a customary review of the loan documents, including the Vargas' financial statement, was conducted. In conjunction with this, the Bank ran a credit check. "[U]pon following [its] standard policy and procedures, the Bank . . . approved a loan to Mr. and Mrs. Vargas in the principal amount of $15,000 at an initial rate of 10.25% on a revolving line of credit."

Regarding the propriety of the loan, the Bank states that the loan was made in the ordinary course of business and in accordance with applicable banking law and regulations. The Bank further states that the loan bears the usual and customary interest rate of the lending institution for the category of loan involved. It states that the customary rate for personal lines of credit is generally the New York prime rate, plus one percent to four percent; the loan to Mr. and Mrs. Vargas was made at the New York prime rate, plus two percent. The Bank then argues that the loan was made on a basis which assured repayment. In support, the Bank cites the following factors which were considered before approving the loan: 1) annual income of both applicants; 2) annual debt service; 3) debt ratio; 4) net worth; 5) TRW national risk score; 6) the Bank's internal loan score; 7) homeowner status; 8) good character; and 9) size of the unsecured loan. The Bank states that a certain senior vice president with extensive experience in extending

unsecured personal lines of credit evaluated these criteria in relation to the Vargases and that his analysis indicated that a signed promissory note was a sufficient assurance that the loan would be repaid.

The Bank further states that the loan is evidenced by a promissory note, and is subject to a due date. The Bank has provided a copy of the promissory note, but not provided any documents or other information which demonstrates how consideration of these factors supported the loan to the Vargases.

The Bank acknowledges that the loan was obtained without using either of the methods at 11 C.F.R. § 100.7(b)(11)(i)(A) or (b), but argues that the "totality of the circumstances" clearly indicate that the loan was made on a basis which assured repayment, citing 11 C.F.R. § 100.7(b)(11)(ii).

C. Analysis

1. Allegations in MUR 4311

a. failure to report costs associated with poll mentioned in CALPEEK

Complainant has presented no evidence that a violation has occurred; rather, he has merely assumed that there were reportable costs associated with taking the poll, that they were incurred during a certain period, and that they were not properly reported. As noted above, the documentation submitted by Complainant does not assist his contention, as it provides no information as to when the poll was conducted.

Respondents have stated that the poll was conducted after the reporting period suggested by Complainant. More importantly, they have stated that volunteers to the campaign created the survey "by gleaning the pertinent data from the [Vargas Committee's] database, and by making

phone calls to selected voters." They state that neither the Vargas Committee nor The Primacy Group incurred any outside expenses in connection with the survey. Although Respondents do not address the value of the services provided by Larry Remer, the president of The Primacy Group who admits to directing the efforts associated with this poll, such services may have been provided pursuant to the general consulting contract between The Primacy Group and the Vargas Committee. Indeed, no evidence has been provided which suggests that The Primacy Group did not bill the Vargas Committee for all services rendered.[7] Accordingly, there does not appear to be reason to believe that the Vargas Committee failed to report costs associated with the poll.

b. acceptance of illegal contribution from campaign manager Ralph Inzunza

Here, Complainant bases his allegation on the fact that Ralph Inzunza is the campaign manager for the Vargas Committee, and that none of the Vargas Committee's reports show payments to him. Accordingly, Complainant concludes that the Vargas Committee accepted a contribution from Mr. Inzunza in the form of his services. Respondents Ralph Inzunza and Larry Remer have both stated that Mr. Inzunza volunteered his services to the Vargas Committee. Pursuant to 2 U.S.C. § 431(8)(B)(i), services provided without compensation by an individual who volunteers on behalf of a candidate or political committee are not a contribution. Thus, nothing about Mr. Inzunza's activities on behalf of the Vargas Committee constitutes a contribution, illegal or otherwise.

[7] The Vargas Committee's most recent report, its 1996 July Quarterly Report, show that it owes $24,506.07 for consulting and expenses.

c. Illegal transfer of funds from non-Federal committee to Federal committee

Several of the violations suggested by complainant fall under this category. First, there is the general allegation that The Primacy Group used funds collected for the city council race in connection with the Federal race. More specifically, there is Complainant's suggestion that Richard D'Ascoli and The Primacy Group were both paid for services performed for the Vargas Committee by Mr. Vargas' city council re-election committee. Additionally, there is the specific allegation that the costs associated with a brochure promoting Mr. Vargas' Federal candidacy were paid for with money from the city council re-election campaign.

Respondents have addressed Complainant's general allegation. Respondents state that there were indications that Mr. Vargas would face a challenger in his re-election race, that the Vargas city council committee prepared for this challenge, and that potential opponents withdrew because the Vargas campaign had prepared so well that potential challengers realized their efforts would be futile. Respondents further state the Vargas city council campaign operated similarly in 1993, raising approximately $65,000 and facing no opposition as a result.

An article in the San Diego Business Journal, attached to the complaint, supports Respondents' contention that Vargas ran unopposed in the 1993 race. See Mike Allen, *Maneuvering by Vargas stuns his fellow Democrats*, S.D. BUS. J., Oct. 16, 1995, at 7 (noting that, in the 1993 city council race, Vargas "was elected for the third time to the Eighth Council District Sept. 19 and for the second time without opposition.") At the same time, documents produced by Respondents do not necessarily support their claim as to the amount of money

raised for the 1993 race. A copy of the summary page from Mr. Vargas' 1993 city council campaign shows that that campaign raised approximately $47,500, not $65,000, for that race.[1]

Thus, there is a discrepancy in what Respondents say was raised for Mr. Vargas' 1993 city council race and his 1995 city council race. Nevertheless, there is no direct evidence that money was used for the city council race in the Federal race. Mr. Vargas may have benefited from an extensive city council campaign in increased visibility and name recognition, but the Commission has long recognized that legitimate activities by office holders are not necessarily campaign-related. See, e.g., MUR s 3855 and 3937 (Friends of Andrea Seastrand for Congress). As noted below, Complainant's specific allegations regarding the use of city council campaign funds to pay for Federal election expenses do not appear to be valid. Accordingly, this Office does not believe Complainant's less specific allegation should be given greater credence in the absence of any other evidence to support it.

With respect to the allegations concerning payments to Mr. D'Ascoli and The Primacy Group, as noted above, Respondents state generally that any money received from the city council re-election committee was for work performed on that campaign. Furthermore, they specifically deny that any money received from the city council re-election committee was used to pay them for work to be done for the Vargas Committee. Respondents do not address, however, what Complainant claims are discrepancies between what D'Ascoli and The Primacy Group were paid for their work for the city council re-election campaign, and their work for the Vargas Committee.

[1] Respondents have also attached a copy of the summary page from Complainant's 1991 race for the city council seat now occupied by Mr. Vargas, showing that Complainant spent $284,000 in that race.

Nevertheless, it does not appear that a comparison of what D'Ascoli and The Primacy Group were paid for each campaign supports Complainant's contention that the city council re-election campaign paid for services provided to the Federal campaign. Indeed, Complainant appears to have used two different sets of figures in comparing what Mr. D'Ascoli was paid, and what The Primacy Group was paid, for the two campaigns. The figure given for payments to Mr. D'Ascoli in connection with the city council re-election campaign was based on two months during the campaign, and included expenses for which Mr. D'Ascoli was apparently reimbursed by the campaign.[9] The figure for The Primacy Group proffered by the Complainant was based on amounts paid to the consultant over the course of nine months. Moreover, with regard to costs incurred by the Vargas Committee for the services of D'Ascoli and The Primacy Group, the complaint was filed before the Vargas Committee filed its 1996 April Quarterly Report, which showed debts and obligations to D'Ascoli and The Primacy Group of $5,000 and $25,623.33, respectively.[10]

Using appropriate figures to compare what Mr. D'Ascoli and The Primacy group were paid, on average, for the nine-month period of the city council re-election campaign, against what they were to be paid, on average, for the six months of the Federal primary campaign, reveals that each received more for the Federal campaign than for the non-Federal campaign. D'Ascoli was paid approximately $9,100 over the nine months of the non-Federal campaign, an average of

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[9] The disclosure statement for California requires that a code be placed by each disbursement, so as to indicate the purpose of that disbursement. In tallying up amounts paid to Mr. D'Ascoli, Complainant not only added those amounts coded "G" and "P", which apply to general operations and overhead, and professional management and consulting services, respectively, and which would appear to represent payment to D'Ascoli for services performed, but also added those amounts coded "F" and "I", which relate to fundraising events and literature, respectively, and which would appear to be reimbursements of costs advanced by Mr. D'Ascoli.

[10] The April Quarterly Report also shows a payment to The Primacy Group of $1,000.

$1,011 per month. D'Ascoli charged $6,800 for the six months of the Federal campaign, an average of $1,133 per month. Likewise, The Primacy Group was paid approximately $15,300 over the nine months of the non-Federal campaign, an average of $1,700 per month, while it charged approximately $27,000 for the six months of the Federal campaign, an average of $4,500 per month. Accordingly, Mr. D'Ascoli and The Primacy Group both apparently worked for the Federal campaign at greater cost than they did for the non-Federal campaign, thus completely undermining this aspect of Complainant's allegations. Consequently, it does not appear that there is reason to believe the non-Federal campaign subsidized the federal campaign in this instance.

The final allegation centers around Complainant's statement that, on September 20, 1995, the day after Mr. Vargas' re-election to the San Diego City Council, flyers touting Vargas' Federal candidacy appeared in the district. The flyer in question, a copy of which is attached to the complaint, states that it was paid for by "Vargas for Congress '96, Deanna Liebergot, Treasurer." Complainant further states that, on that same day, "several full-time staff members began to work in a congressional campaign office," citing the San Diego Business Journal article cited above. Complainant alleges that the Vargas city council re-election campaign paid for the flyers, thus resulting in a transfer of funds from a non-Federal committee to a Federal committee. Complainant further alleges that this expenditure was over $5,000, resulting in Mr. Vargas attaining candidate status by September 20, 1995, and that accordingly, his Statement of Candidacy filed on October 13, 1995 was untimely filed.

Although this specific allegation was not directly addressed by Respondents, Respondents have stressed repeatedly that no money from the city council re-election campaign

was spent in the Federal race. Moreover, despite Complainant's contention, this Office can discern no expense reported on Mr. Vargas' city council re-election campaign reports which might relate to the brochure at issue. In contrast, the Vargas Committee's 1996 January Year-End Report, does show disbursements to PG Printing & Graphics for "Printing" in amounts totaling $2,764 in early October 1995, which more than likely relate to the brochure at issue.

However, although the Vargas Committee reports that it disbursed funds for the brochures in early October 1995, Complainant has alleged that these brochures were being distributed as early as September 20, 1995. If Complainant is correct in his observation, then the Vargas Committee should have reported the disbursement for the brochures as being made as of the date it obtained them, not the date the invoice was paid. *Cf.* FEC v. American Federation of State, County and Municipal Employees - P.E.O.P.L.E. Qualified, et al., CA No. 88-3208 (RCL) (D.D.C. 1990) (where the court determined that a political committee which made an in-kind contribution to a candidate's committee was required to report the cost of that contribution at the time the phone banks were in operation, rejecting the political committee's argument that the disbursement occurred when it paid for the services.) Accordingly, this Office recommends that the Commission find reason to believe that Vargas for Congress '96 and Deanna Liebergot, as treasurer, violated 2 U.S.C. § 434(a)(1) and 11 C.F.R. § 104.14(d) by failing to accurately report the date of the disbursement associated with the brochures.

Mr. Vargas' Statement of Candidacy was filed with the Clerk of the House of Representatives on October 13, 1995, and was dated October 9, 1995. Given that, for Vargas to be in compliance, he could have become a candidate no earlier than September 28, 1995. The Vargas Committee's first report, the 1996 January Year-End Report, shows that the only

disbursement by the Vargas Committee prior to this date was for $200 on September 25, 1995, to San Diego Gas & Electric. Even factoring in the amount apparently spent on the brochures, Mr. Vargas would not have exceeded the threshold for candidate status due to the amount of its expenditures by September 28, 1995. Additionally, by September 29, 1995, the Vargas Committee had only received $3,500 in contributions. Thus, it appears, that the Vargas Committee neither accepted contributions nor made expenditures in excess of $5,000 prior to September 28, 1995, and that, therefore, Mr. Vargas' Statement of Candidacy was timely filed.

2. Allegations in MUR 4327

a. loan from Bank of Commerce

The following summary of the circumstances surrounding the making of the loan is taken from the more complete explanation submitted by the Bank of Commerce, and described *supra* at 11-12. It appears that Mr. Vargas approached the Bank on February 8, 1996 to obtain a loan for $25,000. According to the information received to date, he informed bank personnel at that time that the loan was to assist in his congressional campaign bid. Vargas filled out the Bank's standard loan documents, and a customary review of the loan documents, including Mr. and Mrs. Vargas' financial statement, was conducted. In conjunction with this, the Bank ran a credit check. The Bank's submission further states that a senior vice president with extensive experience in extending unsecured personal lines of credit evaluated nine criteria in relation to the Vargases and his analysis indicated that a signed promissory note was a sufficient assurance

that the loan would be repaid.[11] The Bank approved a loan to Mr. and Mrs. Vargas in the principal amount of $15,000 at an initial rate of 10.25% on a revolving line of credit.

Based on allegations in the complaint, a question arises as to whether the loan was made in the ordinary course of business, specifically, whether it was made on a basis which assures repayment.[12] Because the loan in the instant matter is unsecured, the only way Mr. Vargas can establish this proposition is through the "totality of the circumstances" provision at 11 C.F.R. § 100.7(b)(11)(ii). Generally, section 100.7(b)(11)(ii) "leaves open the possibility that other approaches, such as loans guaranteed in whole or in part by the borrower's signature, which are not specified in the rules, will also be found" to assure repayment. Explanation and Justification, Regulations on Loans from Lending Institutions to Candidates and Political Committees, 56 Fed. Reg. 67118, 67119 (December 27, 1991).

In Advisory Opinion 1994-26, a candidate sought permission to use revolving lines of credit he had held for several years prior to his candidacy. The lines of credit were unsecured signature loans based on the candidate's credit, owned wholly by the candidate and for which no other person was jointly or severally liable on any portion of the accounts. In determining that the totality of the circumstances indicated that use of the lines of credit for the campaign would meet the assurance of repayment requirement, the Commission noted that the lines of credit did

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[11] The following factors were considered before approving the loan: 1) annual income of both applicants; 2) annual debt service; 3) debt ratio; 4) net worth; 5) TRW national risk score; 6) the Bank's internal loan score; 7) homeowner status; 8) good character; and 9) size of the unsecured loan.

[12] The loan is evidenced by a written instrument and is subject to a due date. Moreover, the bank states that, with regard to the 10.25% interest rate, "[t]he customary rate for personal lines of credit will vary, but the range is generally New York prime rate, plus 1% to 4%. In accordance with the Bank's customary practice, the Loan was made to Mr. and Mrs. Vargas at New York prime rate, plus 2%, within this range." The interest rate is a variable one.

not "appear to have been obtained . . . for the purpose of influencing any candidacy or other political purpose." The Commission also took into consideration the fact that the lines had been issued years prior to the candidacy, evidencing a long-standing relationship between the lending institutions and the candidate. The Commission ultimately concluded that the candidate could draw on these lines of credit for his campaign without the draws being considered to be contributions by the bank.[13]

The application of such factors in the instant matter weighs against the loan being considered to have been made on a basis which assures repayment. First, Mr. Vargas has admitted that the unsecured line of credit was obtained specifically to aid in his federal campaign. Second, the loan was obtained with the signature of Vargas' wife; the account was not wholly-owned by the candidate. Finally, there is no evidence that Mr. Vargas had any prior relationship with the bank. Indeed, the Vargas Committee's campaign depository was maintained at another bank.[14]

Certain facts, surrounding the actual making of the loan, however, may suggest that the loan was made on a basis which assures repayment. First, there is the fact that, while both Mr. Vargas and the Bank state that Mr. Vargas approached the Bank for a $25,000 loan, he only obtained a $15,000 loan, suggesting that the Bank only authorized an amount it felt assured would be repaid. Next, there is the fact that approximately one month passed from the time

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[13] The Commission declined to approve the use of one of the lines of credit because it did not appear to have been obtained from a qualified depository institution.

[14] A letter from the Bank's counsel to the California State Banking Department reveals that other questions have been raised about the propriety of the loan. That letter, which was attached to Juan Vargas' response to the complaint, notes that "it is unjust [for the State Banking Department] to question the motives of the Bank's President . . . in relation to the Loan. [The President] had no involvement whatsoever in the Loan's approval. Further, [the President's] tireless efforts on behalf of the Center City Development Corporation has greatly enhanced the City of San Diego's redevelopment.

Mr. Vargas first approached the Bank to request the loan until the promissory note was issued, suggesting the possibility that the Bank carefully evaluated the application. The Bank has represented that a senior vice president with extensive experience in extending unsecured lines of credit evaluated nine criteria in determining whether the signed promissory note alone was sufficient assurance of repayment. Indeed, it appears to this Office that an evaluation of these nine factors, itemized *supra* at 11, would have provided the Bank with sufficient evidence of whether it could expect that the loan would be repaid. The loan was in fact repaid on May 29, 1996.

For the "totality of the circumstances" to demonstrate that repayment is assured, Respondents must produce enough information for the Commission to be able to exercise its own judgment as to the propriety of the loan. The Commission may then determine whether the lending institution properly considered the information in deciding to approve the loan.

Here, Respondents have not met their burden, in that they have failed to provide the Commission with enough information with which to evaluate the Bank's decision. Accordingly, this Office recommends that the Commission find reason to believe that the Bank of Commerce violated 2 U.S.C. § 441b with respect to the making of this loan, and that Vargas for Congress '96 and Deanna Liebergot, as treasurer, violated 2 U.S.C. § 441b by accepting the proceeds of this loan. Because of his involvement in obtaining the loan for the Vargas

Committee, this Office further recommends that the Commission find reason to believe that Juan C. Vargas violated 2 U.S.C. § 441b.

Where a loan is concerned, each endorser is deemed to have contributed that portion of the total amount for which he or she agreed to be liable in a written agreement. See 11 C.F.R. § 100.7(a)(1)(i)(C). In the event that the loan agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered a loan by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors. Id. The spouse of a candidate is not considered a contributor to the candidate's campaign if the candidate obtains a loan on which the spouse's signature is required, jointly owned assets are used as collateral or security for the loan, and the value of the candidate's share of the collateral equals or exceeds the amount of the loan. See 11 C.F.R. § 100.7(a)(1)(i)(D). Where, as here, the spouse of the candidate is a signatory on an unsecured loan, she is treated as any other endorser.

The promissory note in this matter states that "[t]he obligations under this Note are joint and several," meaning that each borrower is liable for the full amount borrowed. The campaign deposited the full amount of the line of credit, $15,000, into its account on March 6, 1996. Up until the 1996 July Quarterly Report, Adrienne Vargas had not made any contribution to the Vargas Committee. Consequently, she could contribute up to $1,000 before she exceeded the limitations at Section 441a(a)(1)(A). Moreover, because Mrs. Vargas was one of two people responsible for paying off the loan, the amount of her contribution is one-half of the draw on the line of credit.

Accordingly, this Office recommends that the Commission find reason to believe that Adrienne Vargas violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive contribution in the amount of $6,500 to Vargas for Congress '96, and that Vargas for Congress '96 and Deanna Liebergot, as treasurer, violated 2 U.S.C. § 441a(f) by accepting this contribution.

b. other loans

Complainant further alleges that two $5,000 loans reported as being made by the candidate probably came from the same bank loan, arguing that "[g]iven the limited assets and incomes shown on Mr. Vargas' Financial Disclosure Statements, it is probable that this $10,000 comes from the same [Bank of Commerce loan]."

The information in hand does not support Complainant's contention. The full amount of the line of credit had been deposited into the Vargas Committee's accounts, and no payments were made on that loan prior to the election. Accordingly, Mr. Vargas could not access that line of credit for more funds. Additionally, while Complainant claims that information on a financial disclosure statement for Mr. Vargas would suggest that Mr. Vargas could not afford to make these loans from personal funds, Complainant has not provided a copy of that statement. Mr. Vargas has stated simply that "[t]here are no such illegal loans."

This Office has obtained a copy of the Financial Disclosure Statement filed by Mr. Vargas with the U.S. House of Representatives on November 2, 1995. Attachment 1. That form shows that Mr. Vargas had total earnings in 1995, up to the time of the filing of the report, of $53,000. The form further shows that Mr. Vargas apparently has two retirement plans worth between $1,001 and $15,000 each.[15] The form did not require reporting of personal savings of

[15] Three retirement plans are reported. One apparently belongs to Mr. Vargas' wife.

$5,000 or less, and no personal savings is reported. The form also indicates debt in the form of two student loans, valued at between $15,001 and $50,000 each.[16] The form did not require the reporting of home mortgages or car loans.

Not only is the information on the Financial Disclosure Form too abstract to draw a conclusion as to whether Mr. Vargas was able to make the loans in question, but it was filed approximately four months before the loans were made, and thus does not present a contemporaneous picture of Mr. Vargas' financial situation.[17] Absent more information, this Office cannot recommend that the Commission find reason to believe that violations occurred with respect to these two loans.

c. failure to report contributions

There does not appear to be any basis to support Complainant's next allegation, that the Vargas Committee failed to report all of the contributions it received. Complainant makes this conclusion by looking at the amount spent by the campaign on television advertising, as evidenced by invoices from local television stations for the period commencing March 11, 1996, $100,885, and argues that because the Vargas Committee's 1996 12-Day Pre-Primary Report showed only $56,000 in cash-on-hand, and because the Vargas Committee reported only $18,000 in contributions in its 48-Hour Notices, the Vargas Committee "would have to have raised $26,000 . . . in a matter of days."

This Office has no evidence to suggest that Mr. Vargas is incorrect in his assertion that "Vargas for Congress '96 has . . . reported all sums raised and expended." As required, the

[16] It is not clear if one of these loans belongs to Mr. Vargas' wife.

[17] The loans were received by the Vargas Committee on March 11 and 12, 1996

Vargas Committee's 12-Day Pre-Primary Report was complete as of the 20th day before the election, March 6, 1996. See 2 U.S.C. § 434(a)(4)(A)(ii). That left almost three weeks before the election, held on March 26, 1996, not "a matter of days", for the Vargas Committee to obtain sufficient funds to pay for the advertising. Complainant acknowledges that the $18,000 reported on 48-Hour Notices brought the amount needed by the Vargas Committee down to $26,000. In fact, the Vargas Committee's 1996 April Quarterly Report shows that, between the date of completion of the Pre-Primary Report and 48 hours prior to the election, it raised over $60,000. Therefore, there is no reason to believe that the Vargas Committee violated the Act with respect to this allegation.

III. PROPOSED RESOLUTION OF MATTER

This report contains recommendations for reason to believe findings against the Vargas Committee for failing to properly report the date of certain disbursements, for accepting a corporate contribution in the form of an improper bank loan, and for accepting an excessive contribution from the spouse of the candidate in the form of a loan guarantee. The report also contains one recommendation against the candidate, Juan Vargas, for accepting the improper bank loan on behalf of the Committee, one recommendation against the candidate's spouse for making an excessive contribution due to her loan guarantee, and one recommendation against the Bank of Commerce for making the improper loan. With regard to all of the other allegations made by Complainant, the report recommends that the Commission find no reason to believe that violations have occurred.

Other than the recommendation regarding the failure to properly report the date of the expenditures associated with the brochure, all of the other for reason to believe findings in this

matter surround the loan obtained from the Bank of Commerce. As noted above, that loan was repaid on May 29, 1996, more than one month before its due date. Additionally, Mr. Vargas was the losing candidate in the primary election, and the Vargas Committee's latest report, the 1996 July Quarterly Report, showed that it had $361 in cash-on-hand, and over $73,000 in debts and obligations, as of June 30, 1996. Thus, while it does appear that violations may have occurred, it further appears that Commission resources would be put to better use in pursuing other matters. Given these factors, this Office recommends that the Commission take no further action against Juan C. Vargas, Adrienne Vargas, Commerce Bank, and Vargas for Congress '96 and Deanna Liebergot, as treasurer, and that it close the file in this matter. In notifying Respondents of the Commission's decisions, this Office will include admonishment language regarding the Act's requirements.

IV. RECOMMENDATIONS

1. Find no reason to believe that Richard D'Ascoli violated the Act.
2. Find no reason to believe that Ralph Inzunza violated the Act.
3. Find no reason to believe that The Primacy Group violated the Act.
4. Find no reason to believe that Juan C. Vargas violated the Act with respect to the allegations in MUR 4311.
5. Find reason to believe that Vargas for Congress '96 and Deanna Liebergot, as treasurer, violated 2 U.S.C. § 434(a)(1) and 11 C.F.R. § 104.14(d) with respect to the allegations in MUR 4311.
6. Find no reason to believe that Vargas for Congress '96 and Deanna Liebergot, as treasurer, committed any other violation with respect to the allegations in MUR 4311.
7. Find reason to believe that the Bank of Commerce, Juan C. Vargas, and Vargas for Congress '96 and Deanna Liebergot, as treasurer, each violated 2 U.S.C. § 441b with respect to the allegations in MUR 4327.

8. Find reason to believe that Adrienne D. Vargas violated 2 U.S.C. § 441a(a)(1)(A) with respect to the allegations in MUR 4327.

9. Find reason to believe that Vargas for Congress '96 and Deanna Liebergot, as treasurer, violated 2 U.S.C. § 441a(f) with respect to the allegations in MUR 4327.

10. Find no reason to believe that Vargas for Congress '96 and Deanna Liebergot, as treasurer, committed any other violation with respect to the allegations in MUR 4327.

11. Take no further action against Juan C. Vargas and Vargas for Congress '96 and Deanna Liebergot, as treasurer, regarding the violations in connection with MUR 4311.

12. Take no further action against the Bank of Commerce, Juan C. Vargas, Adrienne D. Vargas, and Vargas for Congress '96 and Deanna Liebergot, as treasurer, regarding the violations in connection with MUR 4327.

13. Approve the appropriate letters.

14. Close the files.

Lawrence M. Noble
General Counsel

10-3-96
Date

BY: _____
Lois G. Lerner
Associate General Counsel

Attachment:
1. Financial Disclosure Form

Bob Filner
U.S. CONGRESS

MUR 4327

March 19, 1996

General Counsel
Federal Election Commission
999 E Street, NW
Washington DC 20463

Complainant:
Congressman Bob Filner
Filner for Congress
P. O. Box 127868
San Diego, CA 92112

Respondent:
Vargas for Congress '96
FEC ID# C00307256
3609 Fourth Avenue
San Diego, CA 92103

To Whom It May Concern:

California's Primary Election is only six days away and I have become aware that my opponent, Congressional candidate Juan Vargas, is spending tens of thousands of dollars on television advertising in violation of Federal Election Campaign Laws. We know from the Enid Waldholtz scandal in Utah that illegal expenditures of this magnitude can change the outcome of an election.

This situation demands the immediate attention of the Commission and possibly a waiver of the Commission's normal administrative investigatory process to seek injunctive relief. Unless these immediate steps are taken, these violations could quite possibly change the outcome of the March 26, 1996 Primary Election in California's 50th District.

Vargas for Congress, an active Congressional campaign committee in California's 50th District controlled by candidate Juan Vargas, is receiving and spending tens of thousands of dollars in flagrant violation of Federal Election Campaign Act and Federal Election Commission regulations. Vargas has apparently illegally borrowed $25,000 and is spending tens of thousands of dollars on television advertising without lawfully reporting the source of income used to finance this advertising.

P.O. Box 127868 ★ San Diego, CA 92112 ★ Tel: 619/479-1996 ★ FAX: 619/479-1994

Unsecured Personal Obligation Loan

The Vargas for Congress Committee reported in their FEC Report of Receipts and Disbursements filed March 14, 1996 (Schedules C and C-1 and attachments) that Mr. Vargas had loaned $15,000 to his campaign on March 6, 1996. The source of these funds is clearly stated as an "Unsecured Personal Obligation" loan issued by the Bank of Commerce.

This loan is a direct violation of the Commission's regulations requiring that either traditional collateral with a perfected security instrument, or documented future anticipated income, be used to secure the loan. Mr. Vargas clearly states on Schedule C-1 that no future contributions and no assets of any type were pledged as collateral for the loan.

In effect, this loan is an illegal campaign contribution in the amount of $15,000 from the Bank of Commerce to Mr. Vargas.

Of the $18,000 Vargas for Congress has reported on 48 Hour Notices of Contributions Received, $10,000 came from Mr. Vargas himself. Given the limited assets and incomes shown on Mr. Vargas' Financial Disclosure Statements, it is probable that this $10,000 comes from the same illegal loans described above.

Television Advertising Without Lawfully Disclosing Source of Funds

The attached documents acquired from local television stations substantiate the following purchases of television advertising by the Vargas for Congress Committee:

KFMB-TV	Channel 8	$34,450
KNSD-TV	Channel 39	$34,825
KGTV-TV	Channel 10	$25,850
Political	Cablecasts	$2,400
Political	Cablecasts	$3,360
Total:		$100,885

This television buy commenced March 11, 1996--a mere five days after Vargas reported having only $56,052.27 in cash on hand (including the illegal loan). 48 Hour Notices of Contributions Received account for only $18,000 of additional funds raised (from contributions or loans in excess of $1,000). Thus, Mr. Vargas would have to have raised $26,000, all from contributions less than $1,000, and done it in a matter of days. Given Mr. Vargas' past fundraising performance, this is a virtual impossibility. Clearly, funds are being expended on television advertising that have not been lawfully reported to the FEC.

These matters demand immediate and decisive action by the Federal Election Commission. To allow a candidate to purchase significant amounts of television advertising in the final days of a campaign and not report the source of the funds used to pay for the advertising, and to allow that candidate to bankroll his campaign with large, unsecured bank loans, threatens the integrity of the entire electoral process.

Signed and sworn under penalty of perjury,

Bob Filner

BOB FILNER
Member of Congress

ATTACHED:
FEC Report of Receipts and Disbursements filed March 14, 1996
(Schedules C and C-1 and attachments)
48 Hour Notices of Contributions Received
Commercial Broadcast Agreements with Vargas for Congress

BF/vh