

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NORTH CAROLINA

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ESC#66

FEDERAL ELECTION COMMISSION,
1325 K Street, N.W.
Washington, D.C. 20463

Plaintiff,

v.

Civil Action No. 85-212-13

NATIONAL CONGRESSIONAL CLUB
R.E. Carter Wrenn, treasurer
3825 Barrett Drive
Raleigh, North Carolina 27619,

and

R.E. CARTER WRENN
as treasurer of the
National Congressional Club
417-P Hensly Drive
Raleigh, North Carolina 27619,

and

JEFFERSON MARKETING, INC.
3825 Barrett Drive
Raleigh, North Carolina 27619,

Defendants.

FILED

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J. RICH LEONARD, CLERK
U. S. DISTRICT COURT
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COMPLAINT

1. In this action the Federal Election Commission (the "Commission") petitions the court to find that defendant National Congressional Club and R.E. Carter Wrenn, as treasurer, (the "Congressional Club") violated 2 U.S.C. § 434 of the Federal Election Campaign Act of 1971, as amended, (the "Act" or "FECA") by failing to comply with the reporting requirements of that section with respect to the activities of defendant Jefferson Marketing, Inc. ("Jefferson Marketing") and that defendant Jefferson Marketing violated 2 U.S.C. § 441b by making a

corporate contribution to the Democrats for Better Government to Elect Gibson Committee and Daniel M. Freeman, as treasurer, (the "Gibson Committee") by charging less than the fair market value for services rendered.

JURISDICTION AND VENUE

2. This court has jurisdiction of this action pursuant to 28 U.S.C. § 1345 as an action commenced by an agency of the United States government authorized to sue by an Act of Congress. This action seeks declaratory and other appropriate relief pursuant to the express authority granted the Commission in 2 U.S.C. §§ 437d(a)(6) and 437g(a)(6). Venue resides in the United States District Court for the Eastern District of North Carolina pursuant to 2 U.S.C. § 437g(a)(6) as all defendants can be found, reside or transact business in this judicial district.

PARTIES

3. Plaintiff Commission is the independent agency of the United States government vested with exclusive jurisdiction for the civil enforcement of the FECA pursuant to 2 U.S.C. §§ 437c(b)(1), 437d(a)(6) and 437d(e).

4. Defendant Congressional Club is a political committee registered with the Commission as a multicandidate committee and lists its address as 3825 Barrett Drive, Raleigh, North Carolina 27619.

5. Defendant R.E. Carter Wrenn is the Executive Director of the National Congressional Club and lists his address as 417-P Hensley Drive, Raleigh, North Carolina 27619.

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6. Defendant Jefferson Marketing is a corporation organized under the laws of North Carolina and lists its address as 3825 Barrett Drive, Raleigh, North Carolina 27619.

STATUTES AND REGULATIONS

7. 2 U.S.C. § 431(4) defines "political committee" as any group of persons that receives contributions or makes expenditures (as defined by 2 U.S.C. § 431(8) and (9)) aggregating in excess of \$1,000 during a calendar year.

8. 2 U.S.C. § 431(8) defines "contribution" to include any gift, subscription, loan, advance, or deposit of money or anything of value made for the purpose of influencing any federal election.

9. 2 U.S.C. § 434 requires that political committees file detailed reports of all receipts and disbursements with the Commission.

10. 2 U.S.C. § 441b(a) prohibits any corporation whatever from making contributions or expenditures in connection with a federal election.

11. 11 C.F.R. § 100.7(a)(1)(iii) states that the provision of goods and services at less than fair market value is a contribution in an amount equal to the difference between the amount charged and the fair market value.

ADMINISTRATIVE PROCEEDINGS

12. On October 29, 1982, a complaint was filed with the Commission pursuant to 2 U.S.C. § 437g(a)(1). The complaint alleged, inter alia, that during 1982 Jefferson Marketing and the Congressional Club were operated as one organization resulting in

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violations of the reporting provisions of 2 U.S.C. §§ 433 and 434 and violations of the contribution limitation provisions of 2 U.S.C. § 441a(a). The complaint further alleged that Jefferson Marketing made corporate contributions prohibited by 2 U.S.C. § 441b(a) to the Gibson Committee by providing goods and services to that committee at less than fair market value.

13. On May 3, 1983, pursuant to 2 U.S.C. § 437g(a)(2), the Commission found reason to believe that defendant Jefferson Marketing violated 2 U.S.C. § 441b by making prohibited contributions to the Gibson Committee and that defendants Jefferson Marketing and Congressional Club violated 2 U.S.C. §§ 433, 434 and 441a on the basis of their activities with respect to two federal election campaigns.

14. From May 3, 1983, to August 17, 1984, pursuant to 2 U.S.C. § 437g(a)(2), the Commission conducted an investigation of the alleged violations.

15. On August 22, 1984, the Commission's General Counsel notified the defendants, pursuant to 2 U.S.C. § 437g(a)(3), that he was recommending that the Commission find probable cause to believe they had violated the Act and included with that notification a written brief stating the position of the General Counsel on the legal and factual issues of the case.

16. On October 16, 1984, pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), the Commission found probable cause to believe that defendant Congressional Club violated 2 U.S.C. § 434 by failing to comply with the reporting requirements of that section of the FECA with respect to the

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activities of Jefferson Marketing, and that defendant Jefferson Marketing violated 2 U.S.C. § 441b by charging the Gibson Committee less than the fair market value for services rendered.

17. On October 30, 1984, pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), the Commission notified defendants of the probable cause to believe findings described in paragraph 16 above and attempted without success to correct the violations through informal means of conference, conciliation and persuasion.

18. On January 23, 1985, unable to correct the violations of the FECA by informal means, the Commission authorized the filing of this action pursuant to 2 U.S.C. § 437g(a)(6)(A).

19. The Commission has met all the jurisdictional prerequisites to filing this action.

COUNT I

20. Plaintiff incorporates herein by reference the allegations of paragraphs 1 through 19, inclusive.

21. Jefferson Marketing is a corporation that was organized under the laws of the State of North Carolina in December of 1978 and provides political advertising and consulting services that had previously been provided by the Congressional Club. A majority of the original employees of Jefferson Marketing were previously employed by the Congressional Club. Furthermore, Alejandro Castellanos, Richard W. Miller, R.E. Carter Wrenn, and Thomas Ellis have served, or are presently serving, as directors

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or managing officials of more than one of the following organizations: the 1978 Helms for Senate Committee, the 1984 Helms for Senate Committee, the Congressional Club and Jefferson Marketing.

22. The directors of Jefferson Marketing are elected, and may be removed, by a vote of the shareholders holding a majority of the outstanding shares entitled to vote at an election of directors.

23. From 1981 to the present the managing officials of the Congressional Club, R.E. Carter Wrenn and Thomas Ellis, have controlled, as directors of the Congressional Club Foundation, Inc. and the Education Support Foundation, Inc., all of Jefferson Marketing's voting shares of stock.

24. Jefferson Marketing is, and has been at all times, dependent upon the Congressional Club as the source of most of its revenue. Furthermore, the Congressional Club has made interest free loans to Jefferson Marketing, and the directors of the Congressional Club have arranged for additional loans to Jefferson Marketing through an organization known as the Coalition for Freedom, which also operates under the direction and control of R.E. Carter Wrenn and Thomas Ellis.

25. From its inception in 1979 to the present time R.E. Carter Wrenn has exercised domination and control over the day-to-day operations of Jefferson Marketing.

26. Through its officers and managing officials, R.E. Carter Wrenn and Thomas Ellis, the Congressional Club has

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created, financed and controlled Jefferson Marketing. Thus, for the purposes of the FECA, Jefferson Marketing and the Congressional Club are a single entity.

27. Congressional Club is required to report, pursuant to 2 U.S.C. § 434, all of its receipts and disbursements, including those of Jefferson Marketing.

28. The Congressional Club has failed to include in its reports filed with the Commission the receipts and disbursements of Jefferson Marketing.

29. By failing to include the receipts and disbursements of Jefferson Marketing in its reports filed with the Commission, Congressional Club has violated 2 U.S.C. § 434.

COUNT II

30. Plaintiff incorporates herein by reference the allegations of paragraphs 1 through 29 inclusive.

31. During 1982 the Gibson Committee contracted with Jefferson Marketing to provide services in connection with the production and airing of a videotaped television advertisement pertaining to the activities of Congressman Charles G. Rose.

32. The total cost for the production and airing of the videotaped advertisement was \$9,923.32.

33. Jefferson Marketing charged \$617.49 for goods and services it provided under its contract with the Gibson Committee. This amount was established by the executive director of the Congressional Club, R.E. Carter Wrenn. Of this amount, \$264.41 was attributed to Jefferson Marketing's costs and \$353.08

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was attributed to fees for the staff services of Jefferson Marketing. The Gibson Committee made no payment to Jefferson Marketing for any of the above described goods and services. Rather, the Congressional Club reported to the Commission that the entire \$617.49 debt was assumed by the Congressional Club as a contribution to the Gibson Committee.

34. The charge of \$353.08 established by the Congressional Club for the services of Jefferson Marketing's staff associated with producing and airing the videotaped advertisement for the Gibson Committee was less than the fair market value of those services.

35. Pursuant to 2 U.S.C. § 431(8) and Commission Regulation 11 C.F.R. § 100.7(a)(1)(iii), the difference between the charge established by the Congressional Club for the services of Jefferson Marketing and the fair market value of these services was a corporate contribution by Jefferson Marketing to the Gibson Committee in violation of 2 U.S.C. § 441b(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Federal Election Commission prays that this court:

(1) declare that the National Congressional Club and R.E. Carter Wrenn, as treasurer, violated 2 U.S.C. § 434 by failing to include in its reports filed with the Commission the receipts and disbursements of Jefferson Marketing, Inc.;

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(2) declare that Jefferson Marketing, Inc. violated 2 U.S.C. § 441b(a) by charging the Gibson Committee less than the fair market value for services rendered;

(3) order the National Congressional Club and R.E. Carter Wrenn, as treasurer, jointly and severally, to pay to the United States Treasurer, pursuant to 2 U.S.C. § 437g(a)(6), a civil penalty of the greater of \$5,000 or an amount equal to any contribution or expenditure involved in the violations found;

(4) order Jefferson Marketing, Inc. to pay to the United States Treasurer a civil penalty of the greater of \$5,000 or an amount equal to any contribution or expenditure involved in the violations found;

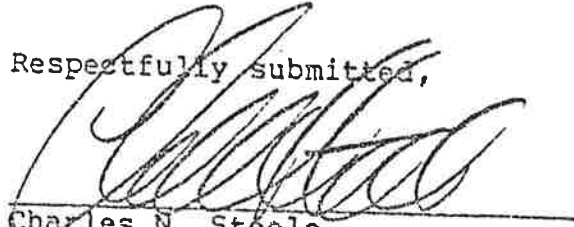
(5) order the National Congressional Club and R.E. Carter Wrenn, as treasurer, to amend its reports filed with the Commission to include full reports of the receipts and disbursements of Jefferson Marketing, Inc.;

(6) enjoin the National Congressional Club and R.E. Carter Wrenn, as treasurer, and Jefferson Marketing, Inc. from violating any provision of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq.; and

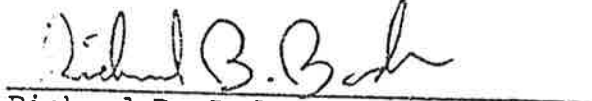
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(7) order such other and further relief as the court deems appropriate.


Respectfully submitted,



Charles N. Steele
General Counsel



Richard B. Bader
Assistant General Counsel



R. Lee Andersen
Assistant General Counsel

February 5, 1985

FOR THE PLAINTIFF FEDERAL
ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

(202) 523-4000

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

FEDERAL ELECTION COMMISSION,)
)
Plaintiff,)
)
v.)
)
NATIONAL CONGRESSIONAL CLUB, <u>et al.</u> ,)
)
Defendants.)

J. RICH LINDNER, CLERK
U. S. DISTRICT COURT
85-242-CIV-5
Judge Britt

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ANSWER AND COUNTERCLAIMS

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1. Defendants admit that plaintiff makes the allegations and requests the relief referred to in paragraph 1 of the Complaint. Defendants deny all other allegations of paragraph 1.
2. Defendants deny that this Court has jurisdiction of this action. Defendants admit that plaintiff requests the relief referred to in the second sentence of paragraph 2 of the Complaint. Defendants admit that venue is proper in this judicial district.
3. Defendants admit the allegations of paragraph 3 of the Complaint.
4. Defendants admit the allegations of paragraph 4 of the Complaint.
5. Defendants admit the allegations of paragraph 5 of the Complaint.

6. Defendants admit the allegations of paragraph 6 of the Complaint.

7. To the extent the allegations in paragraph 7 of the Complaint consist of legal conclusions, no response is required. To the extent they do not, they are denied.

8. To the extent the allegations in paragraph 8 of the Complaint consist of legal conclusions, no response is required. To the extent they do not, they are denied.

9. To the extent the allegations in paragraph 9 of the Complaint consist of legal conclusions, no response is required. To the extent they do not, they are denied.

10. To the extent the allegations in paragraph 10 of the Complaint consist of legal conclusions, no response is required. To the extent they do not, they are denied.

11. To the extent the allegations in paragraph 11 of the Complaint consist of legal conclusions, no response is required. To the extent they do not, they are denied.

12. Defendants lack sufficient information to admit or to deny the allegations of the first sentence of paragraph 12 of the Complaint. As to the allegations in the second and third sentences of paragraph 12 of the Complaint, they are denied. A copy of Congressman Rose's complaint is attached hereto as Exhibit A and speaks for itself.

13. Defendants lack sufficient information to admit or to deny the allegations of paragraph 13 of the Complaint.

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Plaintiff's letter to Defendants concerning its alleged actions on May 3, 1983, is attached hereto as Exhibit B and speaks for itself.

14. As to the allegations of paragraph 14 of the Complaint, defendants admit that plaintiff conducted an investigation of them but deny the remainder of paragraph 14 of the Complaint, and deny specifically any implication in paragraph 14 that that investigation was authorized by or complied with the requirements of 2 U.S.C. § 437g(a)(2) or any other provision of law or the Constitution.

15. As to the allegations of paragraph 15 of the Complaint, the General Counsel's August 22, 1984, notice and brief are attached hereto as Exhibit C and speak for themselves. Defendants deny the remainder of paragraph 15 of the Complaint, and deny specifically any implication in paragraph 15 of the Complaint that the actions referred to complied with 2 U.S.C. § 437g or any other provision of law or the Constitution.

16. Defendants lack sufficient information to admit or to deny the allegations of paragraph 16 of the Complaint. Plaintiff's notice to defendants of its alleged action on October 16, 1984, is attached hereto as Exhibit D and speaks for itself. Defendants deny the remainder of paragraph 16 of the Complaint, and deny specifically any implication in paragraph 16 of the Complaint that the actions referred to complied

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with 2 U.S.C. § 437g or any other provision of law or the Constitution.

17. As to paragraph 17 of the Complaint, defendants admit that on October 30, 1984, plaintiff notified defendants of the alleged actions referred to in paragraph 16 of the Complaint. Defendants deny the remainder of paragraph 17 of the Complaint, and deny specifically any implication that that notice or plaintiff's attempt at conference, conciliation, and persuasion complied with 2 U.S.C. § 437g or any other provision of law or the Constitution.

18. Defendants lack sufficient information to admit or to deny the allegations of paragraph 18 of the Complaint. Plaintiff's notice to defendants of its alleged action on January 23, 1985, is attached hereto as Exhibit E and speaks for itself. Defendants deny the remainder of paragraph 18 of the Complaint, and deny specifically any implication in paragraph 18 of the Complaint that the actions referred to complied with 2 U.S.C. § 437g or any other provision of law or the Constitution.

19. Defendants deny the allegations of paragraph 19 of the Complaint.

20. As to paragraph 20 of the Complaint, paragraphs 1-19 of this Answer are incorporated herein by reference.

21. As to the first sentence of paragraph 21 of the Complaint, defendants admit that Jefferson Marketing is a

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corporation organized under the laws of North Carolina in 1978; defendants deny that Jefferson Marketing provides advertising and consulting services that had previously been provided by the Congressional Club. Defendants admit the allegations of the second sentence of paragraph 21. As to the allegations of the third sentence of paragraph 21, (1) with respect to Mr. Castellanos, defendants deny them; (2) with respect to Mr. Miller, he was the voluntary chairman of the Congressional Club from 1977-1978 and a director thereafter of Jefferson Marketing from 1979-1981; (3) with respect to Mr. Ellis, he was chairman of the 1978 Helms Committee and is the Chairman of the Congressional Club; and (4) as to Mr. Wrenn, he was Treasurer of the 1978 Helms Committee and is Executive Director of the Congressional Club. Defendants deny that any of the individuals named in that sentence held or hold any positions in or had or have relationships to any of the entities named in that sentence other than as recited in the preceding sentence.

22. Defendants admit the allegations of paragraph 22 of the Complaint.

23. As to the allegations of paragraph 23 of the Complaint, since 1981 Messrs. Ellis and Wrenn, Chairman and Executive Director respectively of the National Congressional Club, have been directors of the Congressional Club Foundation, Inc., and the Educational Support Foundation, Inc., which have owned all the voting stock of Jefferson Marketing, Inc. Defendants deny the remaining allegations of paragraph 23 of the Complaint.

24. Defendants deny the allegations of paragraph 24 of the Complaint.

25. Defendants deny the allegations of paragraph 25 of the Complaint.

26. Defendants deny the allegations of paragraph 26 of the Complaint.

27. To the extent the allegations in paragraph 27 of the Complaint consist of legal conclusions, no response is required. To the extent they do not, they are denied.

28. To the extent the allegations in paragraph 28 of the Complaint consist of legal conclusions, no response is required. To the extent they do not, they are denied.

29. To the extent the allegations in paragraph 29 of the Complaint consist of legal conclusions, no response is required. To the extent they do not, they are denied.

30. As to paragraph 30 of the Complaint, paragraphs 1-19 of this answer are incorporated herein by reference.

31. As to the allegations of paragraph 31 of the Complaint, the Congressional Club paid Jefferson Marketing for the goods and services provided to the Gibson Committee and made an in-kind contribution of those goods and services to the Gibson Committee.

32. Defendants admit the allegations of paragraph 32 of the Complaint, but deny any implication that all of the amount of \$9,923.32 mentioned therein applied to goods and services provided to the Gibson Committee by Jefferson Marketing.

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goods and
Jefferson Marketing's services had a usual and normal value of \$617.49. The balance of \$9,305.83 represents goods and services not provided by Jefferson Marketing (production work, air time) and paid for to the other vendors by the Gibson Committee.

33. As to the allegations of paragraph 33 of the Complaint, the Congressional Club in 1982 paid Jefferson Marketing a monthly fee based on a formula that covered overhead and ensured a profit to Jefferson Marketing. The \$617.49 referred to in the first sentence of paragraph 23 represented an allocation by Mr. Wrenn of the portion of that monthly fee attributable to the Jefferson Marketing goods and services that the Congressional Club contributed to the Gibson Committee, which the Congressional Club reported to the plaintiff.

34. Defendants deny the allegations of paragraph 34 of the Complaint.

35. Defendants deny the allegations of paragraph 35 of the Complaint.

Defendants deny that plaintiff is entitled to any relief whatsoever.

FIRST AFFIRMATIVE DEFENSE^{1/}

36. The Commission's finding that there is probable cause to believe that NCC and JMI have violated the FECA based

^{1/} Facts relevant to defendants' affirmative defenses are set out at paragraphs 1-21 of the Counterclaim.

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on an alleged NCC/JMI relationship, as to which the Commission has never taken a reason-to-believe vote, violates the provisions of the FECA, 2 U.S.C. § 437g(a)(2), the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and is an abuse of discretion, arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right.

SECOND AFFIRMATIVE DEFENSE

37. The Commission's failure to notify defendants of the factual and legal bases for its investigation in MUR 1503 violates the provisions of the FECA, 2 U.S.C. § 437g(a)(2), the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and is an abuse of discretion, arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right.

THIRD AFFIRMATIVE DEFENSE

38. The Commission's refusal to give defendants an opportunity to respond to the General Counsel's position on the legal issues raised by the Commission's failure to make or to communicate to NCC and JMI a reason-to-believe finding on

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the alleged NCC/JMI relationship and any reason-to-believe finding as to Wrenn violates the provisions of the FECA, 2 U.S.C. § 437g(a)(2), and the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and is an abuse of discretion, arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right.

FOURTH AFFIRMATIVE DEFENSE

39. In view of all the circumstances, the Commission's final action in MUR 1503 in deciding to institute suit against defendants violates the provisions of the FECA and the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and is an abuse of discretion, arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right.

FIFTH AFFIRMATIVE DEFENSE

40. The Complaint's allegations concerning events occurring before or after the 1982 election and all allegations as to Wrenn are outside the scope of the investigation in MUR 1503 and violate the provisions of the FECA and the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and is an abuse of discretion,

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arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right.

SIXTH AFFIRMATIVE DEFENSE

41. The Complaint fails to state a claim upon which relief may be granted.

SEVENTH AFFIRMATIVE DEFENSE

42. This court lacks jurisdiction over this case.

EIGHTH AFFIRMATIVE DEFENSE

43. The plaintiff's construction of the Federal Election Campaign Act, as amended, 2 U.S.C. § 431 ("FECA"), in this case is contrary to that statute's terms and violates the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and is an abuse of discretion, arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right.

NINTH AFFIRMATIVE DEFENSE

44. The discretionary authority given to the Commission to enforce laws regulating the political process, 2 U.S.C. § 437g, is overbroad and violates the First and Fifth Amendments to the United States Constitution.

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TENTH AFFIRMATIVE DEFENSE

45. The provisions of the FECA allegedly violated, 2 U.S.C. §§ 434 and 441b(a), are void for vagueness under the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution.

ELEVENTH AFFIRMATIVE DEFENSE

46. The plaintiff's failure to follow the enforcement procedures of the FECA, 2 U.S.C. § 437g, as to Wrenn violates that statute's terms and violates the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and is an abuse of discretion, arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right.

COUNTERCLAIMS

[For Declaratory and Injunctive Relief]

1. These are counterclaims for declaratory and injunctive relief. Counterclaimants, the National Congressional Club ("NCC"), Jefferson Marketing, Inc. ("JMI"), and R.E. Carter Wrenn ("Wrenn") are defendants in this case, which arises out of an investigation conducted by the plaintiff Federal Election Commission ("Commission"), under the Federal Election Campaign Act, as amended, 2 U.S.C. § 431 et seq.

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("FECA"). This investigation was styled Matter Under Review ("MUR") 1503 by the Commission.

JURISDICTION AND VENUE

2. This action arises under the FECA's provisions setting forth the Commission's investigatory and enforcement powers, 2 U.S.C. § 437g, and under the First and Fifth Amendments to the United States Constitution.

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, and under the judicial-review provisions of the Administrative Procedure Act, 5 U.S.C. §§ 702-706. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(e).

PARTIES

4. NCC is a multicandidate political committee within the meaning of the FECA. NCC solicits and receives contributions from thousands of persons throughout the United States. These persons makes these contributions so that their collective, associated voice will give expression to the political views they hold. NCC makes contributions to federal candidates throughout the United States and supports federal candidates through independent-expenditure projects.

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5. Wrenn is Executive Director of NCC and also engages in activities protected by the First Amendment to the Constitution.

6. JMI is a corporation organized and operated under the laws of North Carolina. JMI provides a variety of goods and services to political committees (including NCC), charitable organizations (such as the Boy Scouts) and other groups, such as direct mail services, advertising, and media time buying.

7. The Commission is authorized by Congress to administer and to enforce the FECA.

PROCEDURAL REQUIREMENTS OF THE FECA
RELATING TO INVESTIGATIONS

8. The FECA contains a set of broad prohibitions, limitations, and registration and reporting requirements, all focused on political activity. E.g., 2 U.S.C. §§ 432-434, 439a-441h. The reach of the FECA is further broadened by definitional provisions that are of sweeping, vague, and uncertain scope. Id. § 431. The Commission's authority to investigate a complaint relating to these provisions is set out in the FECA. When the Commission receives a complaint, it must give the target of the complaint notice of the charges and an opportunity to respond before the Commission may find that there is "reason to believe" a violation of the FECA has occurred. Id. § 437g(a)(1). If after reviewing the target's

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response the Commission finds "reason to believe," before investigating further it must give the target notice of "the factual basis for such alleged violation." Id. § 437g(a)(2).

9. At the close of the investigation, the Commission must provide the target with a copy of the General Counsel's brief making a recommendation to the Commission so that the target can file a responsive brief. Id. § 437g(a)(3). The purpose of this procedure is to afford the target an opportunity to respond to "the position of the General Counsel on the legal and factual issues of the case." Id. Both briefs must be submitted to the Commission before it can find whether there is "probable cause" to believe a violation has occurred. Id. If the Commission finds "probable cause," a mandatory conciliation period takes place. Id. § 437g(a)(4)(i). Conciliation is the preferred method of resolving complaints. In re Carter-Mondale Re-election Committee, Inc., 642 F.2d 538, 543 (D.C. Cir. 1980). If no agreement is reached, the Commission may take final action by instituting a civil action in district court against the target. Id. § 437g(a)(6)(A). In addition, an individual may bring a suit for declaratory relief; constitutional questions raised by such a suit must be certified immediately to the relevant court of appeals sitting en banc. Id. § 437h(a).

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THE INVESTIGATION IN MUR 1503

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10. On November 2, 1982, the Commission notified NCC and JMI that Congressman Charles Rose of North Carolina had filed a complaint against them. See Exhibit A. The complaint, styled Matter under Review ("MUR") 1503, referred to certain services provided by JMI in connection with a television commercial produced for Congressman Rose's opponent in the 1982 primary election. The commercial criticized a trip taken at taxpayers' expense to Rio de Janeiro by Congressman Rose and a female staff member. Congressman Rose's complaint alleged that JMI had provided these services to Congressman Rose's opponents for less than the market rate, which allegedly resulted in a prohibited corporate contribution by JMI. At the end of the complaint, Congressman Rose made allegations concerning the relationship between JMI and NCC, some of which were incorrect. For example, the complaint erroneously stated that NCC and JMI are parent and subsidiary. These allegations related solely to Congressman Rose's primary and general-election campaigns in 1982.

11. That the complaint was limited to specific activities relating to Congressman Rose's 1982 campaign was confirmed on June 2, 1983, when the Commission notified NCC and JMI that it had found "reason to believe" that NCC and JMI had violated certain FECA provisions. See Exhibit B. The Commission's reason-to-believe letter referred only to the

commercial discussed in the complaint. It was limited to the 1982 primary and general-election campaigns of Messrs. Gibson and Johnson (Congressman Rose's opponents, respectively, in the two elections). Nowhere did the Commission's letter raise any broader, more general issue concerning a relationship between NCC and JMI. Moreover, the letter did not refer to Wrenn in any way. Specifically, the Commission's notification stated:

Upon further review of the allegations set forth in the complaint, information supplied by you, and a review of reports on file with the Commission, the Commission on May 3, 1983, found reason to believe that Jefferson Marketing, Inc. and the Congressional Club violated certain provisions of the Act. Specifically, it appears that Jefferson Marketing, Inc. violated:

2 U.S.C. § 441b by making prohibited in-kind contributions to Democrats For Better Government to Elect Gibson ("Gibson Committee") in connection with services to the Gibson Committee for the production and airing of a videotape advertisement used in the Gibson campaign.

It also appears that Jefferson Marketing, Inc. and the Congressional Club violated 2 U.S.C. §§ 433, 434, 441a on the basis of their activities with respect to the campaigns of Thomas Carr Gibson and Edward H. Johnson.

12. Discovery progressed in the investigation during the fall and winter of 1983. On February 15, 1984, the Commission filed a subpoena-enforcement action in the District Court for the Eastern District of North Carolina. Attached to

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its complaint were documents NCC and JMI had submitted in the course of discovery. In addition, certain internal documents of the Commission, not before made available to the respondents, were attached to the complaint. At this time, JMI and NCC received the first intimation that the scope of the investigation went beyond the reason-to-believe findings communicated to them on June 2, 1983. Attached to the subpoena-enforcement complaint was the Commission's secretary's certification of its reason-to-believe findings. Of the seven reason-to-believe findings, two related to NCC and JMI. None related to Wrenn. These two findings stated that the Commission:

1. Decided by a vote of 4-2 to find reason to believe that Jefferson Marketing, Inc. violated 2 U.S.C. § 441b by making prohibited contributions to the principal campaign committee of Thomas Carr Gibson.

Commissioners Harris, McDonald, McGarry, and Reiche voted affirmatively for the decision; Commissioners Aikens and Elliott dissented.

2. Decided by a vote of 4-2 to find reason to believe that Jefferson Marketing, Inc. and the National Congressional Club violated 2 U.S.C. §§ 433, 434, and 441a on the basis of their activities with respect to the campaigns of Thomas Carr Gibson and Edward H. Johnson.

A copy of this document is attached hereto as Exhibit F.

13. These internal documents contained another statement, not listed in the above reason-to-believe findings, and not itself purporting to be a reason-to-believe finding. The document stated that the Commission:

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Decided by a vote of 5-1 that the letters, orders and subpoenas attached to the General Counsel's April 21, 1983 report be returned to the Office of the General Counsel for revision, and that the scope of the inquiry be limited to establishing the facts of the alleged violations on which the Commission has found reason to believe, plus any facts which will assist in determining the relationship between the National Congressional Club and Jefferson Marketing, Inc., and that the revised documents be circulated to the Commission for approval on a tally vote basis. Commissioners Elliott, Harris, McDonald, McGarry, and Reiche voted affirmatively for the decision; Commissioner Aikens dissented.

(Emphasis added.)

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14. On August 22, 1984, the Commission's General Counsel submitted a brief to NCC and JMI recommending that the Commission find probable cause that NCC and JMI had violated certain provisions of the FECA. See Exhibit C. The General Counsel's brief virtually ignored the specific allegations of the complaint concerning Congressman Rose's 1982 campaigns. Instead, the General Counsel's brief focused almost exclusively on the issue raised in the Commission's internal document not made available to NCC and JMI at the time they were notified of the Commission's reason-to-believe finding. The General Counsel's brief based its recommendation that the Commission find probable cause on certain arguments about an alleged NCC/JMI relationship. The General Counsel recommended a probable cause finding of substantive and reporting violations of the FECA based on that relationship and a violation

of the FECA's prohibition on corporate contributions with respect to JMI. His brief did not recommend anything with respect to Wrenn.

15. On September 21, 1984, NCC and JMI responded to the General Counsel's brief. At the same time, NCC and JMI argued in a separate letter that proceedings by the Commission on the basis of the General Counsel's brief would violate the FECA and the Constitution in two respects. (A copy of this letter is attached hereto as Exhibit G.) First, the Commission's notification to NCC and JMI of its reason-to-believe vote contained nothing concerning the alleged relationship between NCC and JMI. That defect meant the Commission exceeded its statutory and constitutional authority when it found probable cause without the Commission's first having found reason to believe that the FECA was violated in this respect.

16. Second, the General Counsel's brief did not address the legal question concerning the Commission's authority to take a probable-cause vote based on the alleged NCC/JMI relationship. NCC and JMI therefore never had an opportunity to respond to the General Counsel's position on that legal question, contrary to the mandate of 2 U.S.C. § 437g(a)(3) and the due-process clause. NCC and JMI accordingly requested that they be given an opportunity to respond in writing to whatever materials the General Counsel submitted to the Commission setting out his position on that issue.

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17. On October 30, 1984, the Commission notified NCC and JMI that it had found probable cause on certain issues. That letter made no reference to Wrenn. See Exhibit D. The letter revealed that the Commission had rejected its General Counsel's recommendations concerning alleged substantive violations of the FECA by NCC and JMI based on an alleged NCC/JMI relationship. Yet it accepted his recommendation as to alleged reporting violations arising out of those alleged substantive violations. At the same time, it denied the request of NCC and JMI that they be given an opportunity to respond to the General Counsel's position submitted to the Commission on the authority of the Commission to find probable cause without first having made, and communicated to NCC and JMI, a reason-to-believe determination concerning an alleged NCC/JMI relationship. On information and belief, the General Counsel and members of his staff were present when the Commission discussed these actions. Counsel for NCC and JMI were not.

18. The Commission, NCC, and JMI then entered into the conciliation period set out in the FECA, which ended January 28, 1985. The General Counsel proposed a draft conciliation agreement with NCC and JMI, but which did not include Wrenn as a party to the agreement. See id. The General Counsel and his staff could not explain the theory upon which the Commission had found probable cause on some issues but not others. The General Counsel and his staff were also unable to explain

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the legal basis on which the Commission had taken a complaint limited to one television advertisement in one election and turned it into Count I of the Commission's complaint in this action. NCC and JMI made a counterproposal to the Commission. The Commission did not respond, but instead instituted this action against NCC, JMI, and Wrenn. See Exhibit E.

THE COMPLAINT IN MUR 1792

19. On October 1, 1984, NCC and JMI received a copy of a complaint styled MUR 1792. This complaint was filed by the Democratic Party of North Carolina. Among other arguments, it makes the same allegation as the General Counsel's August 22, 1984, brief in MUR 1503 concerning an alleged NCC/JMI relationship.

20. On October 2, 1984, counsel for NCC and JMI wrote to the General Counsel requesting that MUR 1792 and MUR 1503 be consolidated. (A copy of this letter is attached hereto as Exhibit H.) They pointed out that, because JMI's alleged relationship to NCC is the centerpiece of both proceedings, the identity of legal theories and factual bases between the two cases threatens NCC and JMI with intolerable litigation burdens that Congress sought to avoid by the structure it created in the FECA. In addition to facing another lengthy investigation, NCC and JMI pointed out that the scope of the General Counsel's argument in MUR 1503 threatened

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irreparable harm to NCC and JMI in MUR 1792. Because the General Counsel's MUR 1503 brief argued that the alleged NCC/JMI relationship exists at the present, there was a substantial likelihood that MUR 1503 would prejudice any investigation in MUR 1792, even though the MUR 1503 investigation contained no evidence past mid-1983. In addition, the continuing uncertainty chills NCC's freedoms of speech and of association by hampering its ability to solicit contributions and otherwise to engage in political activities and has the same effect on Wrenn. The investigation in MUR 1503, the instant civil suit by the Commission, and the Commission's reason-to-believe vote in MUR 1792 intensify these difficulties.

21. In these circumstances, NCC and JMI requested that the two proceedings be consolidated. On October 30, 1984, in the same letter notifying NCC and JMI of the Commission's probable-cause vote in MUR 1503, the Commission refused to consolidate the two cases. NCC and JMI subsequently offered to combine conciliation of MUR 1503 with conciliation either of MUR 1792 in its entirety or of those issues in that proceeding which overlap with issues in MUR 1503. See Exhibit D. The pendency of MUR 1792 inhibited and prevented the resolution of MUR 1503 through conciliation, the FECA's preferred method of resolving complaints, because any agreement in MUR 1503 would not resolve the same issues pending in MUR 1792.

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FIRST COUNTERCLAIM

22. Paragraphs 1-21 are incorporated herein by reference and made a part hereof. The discretionary authority given to the Commission to enforce laws regulating the political process is overbroad and violates the First and Fifth Amendments to the United States Constitution.

SECOND COUNTERCLAIM

23. Paragraphs 1-21 are incorporated herein by reference and made a part hereof. The enforcement provisions of the FECA, 2 U.S.C. § 437g, are void for vagueness under the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution.

THIRD COUNTERCLAIM

24. Paragraphs 1-21 are incorporated herein by reference and made a part hereof. The Commission's refusal to consolidate MUR 1503 and MUR 1792 violates the provisions of the FECA and the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and is an abuse of discretion, arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right.

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FOURTH COUNTERCLAIM

25. Paragraphs 1-21 are incorporated herein by reference and made a part hereof. The Commission's finding that there is probable cause to believe that counterclaimants have violated the FECA based on an alleged NCC/JMI relationship, as to which the Commission has never taken a reason-to-believe vote, violates the provisions of the FECA, 2 U.S.C. § 437g(a)(2), the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and is an abuse of discretion, arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right.

FIFTH COUNTERCLAIM

26. Paragraphs 1-21 are incorporated herein by reference and made a part hereof. The Commission's failure to notify counterclaimants of the factual and legal bases for its investigation in MUR 1503 violates the provisions of the FECA, 2 U.S.C. § 437g(a)(2), the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and is an abuse of discretion, arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right.

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SIXTH COUNTERCLAIM

27. Paragraphs 1-21 are incorporated herein by reference and made a part hereof. The Commission's refusal to give counterclaimants an opportunity to respond to the General Counsel's position on the legal issues raised by the Commission's failure to make or to communicate to counterclaimants a reason-to-believe finding on the alleged NCC/JMI relationship, or any finding at all as to Wrenn, violates the provisions of the FECA, 2 U.S.C. § 437g(a)(2), and the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and is an abuse of discretion, arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right.

SEVENTH COUNTERCLAIM

28. Paragraphs 1-21 are incorporated herein by reference and made a part hereof. In view of all the circumstances, the Commission's final action in MUR 1503 in deciding to institute suit against counterclaimants violates the provisions of the FECA and the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and is an abuse of discretion, arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right.

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EIGHTH COUNTERCLAIM

29. Paragraphs 1-21 are incorporated herein by reference and made a part hereof. The Complaint's allegations concerning events occurring after the 1982 election and all allegations as to Wrenn are outside the scope of the investigation in MUR 1503 and violate the provisions of the FECA and the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and are an abuse of discretion, arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right.

NINTH COUNTERCLAIM

30. Paragraphs 1-21 are incorporated herein by reference and made a part hereof. The Commission's construction of the Federal Election Campaign Act, as amended, 2 U.S.C. § 431, in this case is contrary to that statute's terms and violates the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and is an abuse of discretion, arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right.

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TENTH COUNTERCLAIM

31. Paragraphs 1-21 are incorporated herein by reference and made a part hereof. The plaintiff's failure to follow the enforcement procedures of the FECA, 2 U.S.C. § 437g, as to Wrenn violates that statute's terms and violates the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and is an abuse of discretion, arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right.

PRAYER FOR RELIEF

WHEREFORE, counterclaimants respectfully ask that this Court:

1. Declare the following:

(a) the discretionary authority given to the Commission to enforce laws regulating the political process is over-broad and violates the First Amendment to the United States Constitution;

(b) the enforcement provisions of the FECA, 2 U.S.C. § 437g, are void for vagueness under the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution;

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(c) the Commission's refusal to consolidate MUR 1503 and MUR 1792 violates the provisions of the FECA and the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and is an abuse of discretion, arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

(d) the Commission's finding that there is probable cause to believe that counterclaimants have violated the FECA based on an alleged NCC/JMI relationship, as to which the Commission has never taken a reason-to-believe vote, violates the provisions of the FECA, 2 U.S.C. § 437g(a)(2), the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and is an abuse of discretion, arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

(e) the Commission's failure to notify counterclaimants of the factual and legal bases for its investigation in MUR 1503 violates the provisions of the FECA, 2 U.S.C. § 437g(a)(2), the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and is an abuse of discretion, arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

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(f) the Commission's refusal to give counterclaimants an opportunity to respond to the General Counsel's position on the legal issues raised by the Commission's failure to make or to communicate to counterclaimants a reason-to-believe finding on the alleged NCC/JMI relationship, or any findings at all as to Wrenn, violates the provisions of the FECA, 2 U.S.C. § 437g(a)(2), and the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and is an abuse of discretion, arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

(g) in view of all the circumstances, the Commission's final action in MUR 1503 in deciding to institute suit against counterclaimants violates the provisions of the FECA and the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and is an abuse of discretion, arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

(h) the Complaint's allegations concerning events occurring after the 1982 election and all allegations as to Wrenn are outside the scope of the investigation in MUR 1503 and violate the provisions of the FECA and the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and are an abuse of discretion, arbitrary

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and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

(i) the Commission's construction of the Federal Election Campaign Act, as amended, 2 U.S.C. § 431, in this case is contrary to that statute's terms and violates the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and is an abuse of discretion, arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right; and

(j) the plaintiff's failure to follow the enforcement procedures of the FECA, 2 U.S.C. § 437g, as to Wrenn violates that statute's terms and violates the First Amendment and the due-process clause of the Fifth Amendment to the United States Constitution, and is an abuse of discretion, arbitrary and capricious, not in accordance with law and in excess of statutory jurisdiction, authority, or limitation, or short of statutory right.

2. Permanently enjoin the Commission from conducting activities purportedly authorized by or carried out under 2 U.S.C. § 437g.

3. Permanently enjoin the Commission from conducting any activities purportedly authorized by or carried out under 2 U.S.C. § 437g with respect to counterclaimants in MUR 1503 or MUR 1792.

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4. Grant such other and further relief as the Court considers appropriate.

5. Award counterclaimants the costs of suit, including reasonable fees and expenses of counsel.

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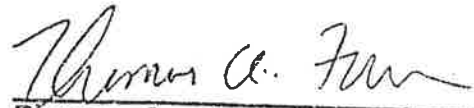
March 19, 1985

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of March, 1985, I caused a copy of the foregoing to be served upon the following by U.S. mail, first-class postage prepaid:

Richard Bader, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463


Thomas A. Farr

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