

DEC 29 2008

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

**FIRST GENERAL COUNSEL'S REPORT**

MUR 6064

DATE COMPLAINT FILED: 9/2/08

DATE OF NOTIFICATION: 9/4/08

LAST RESPONSE RECEIVED: 9/18/08

DATE ACTIVATED: 9/30/08

EXPIRATION OF SOL: 12/15/11

**COMPLAINANT:** Richard Monroe, Monroe for Congress

**RESPONDENT:** Missouri State University

**RELEVANT STATUTES  
AND REGULATIONS:**

- 2 U.S.C. § 431(8)
- 2 U.S.C. § 431(9)
- 2 U.S.C. § 431(20)(A)(iii)
- 2 U.S.C. § 431(22)
- 2 U.S.C. § 441a(a)(7)(B)(i)
- 2 U.S.C. § 441c(a)
- 11 C.F.R. § 100.24(b)(3)
- 11 C.F.R. § 100.26
- 11 C.F.R. § 100.52
- 11 C.F.R. § 100.111(e)(1)
- 11 C.F.R. § 109.21
- 11 C.F.R. § 115.2(a)

**INTERNAL REPORTS CHECKED:** Commission Database

**FEDERAL AGENCIES CHECKED:** None

**I INTRODUCTION**

The complaint alleges that Missouri State University ("MSU"), a federal government contractor, made a prohibited in-kind federal contribution and engaged in "federal election activity" when it named a new science facility after Congressman Roy Blunt, a candidate for re-election in Missouri's Seventh Congressional District. While

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1 the complainant generally alleges that naming the science facility after Rep. Blunt  
2 constituted something of value to his re-election campaign, there is no specific  
3 information that connects the naming of the facility to the election. Although the  
4 complaint characterizes the naming as federal election activity ("FEA"), pursuant to  
5 2 U.S.C. § 431(20)(iii) (which includes public communications that promote or support a  
6 clearly identified federal candidate), it does not explain the legal significance of such a  
7 conclusion for an organization, such as MSU, which is not subject to any of the funding  
8 restrictions of 2 U.S.C. § 441i, the statutory provision for which FEA is defined.

9 The MSU naming activities do not appear to constitute FEA, because they either  
10 do not meet the definition of "public communications" required for FEA, or do not  
11 "promote" or "support" Rep. Blunt. Even if some portion of the naming activities did  
12 constitute FEA, this status is not equivalent to making a prohibited contribution or  
13 expenditure.

14 Given the complaint's broad allegation, we also analyzed whether any MSU  
15 naming activity would constitute a prohibited independent expenditure or, via  
16 coordination, a prohibited in-kind contribution. Based on the available information, we  
17 conclude that the naming activities were not for the purpose of influencing a federal  
18 election, and recommend that the Commission find no reason to believe that MSU  
19 violated any provision of the Federal Election Campaign Act of 1971, as amended ("the  
20 Act").

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 MSU is a four-year publicly supported multi-campus university with over 19,000  
4 students at its main campus in Springfield, Missouri. See <http://www.missouristate.edu>  
5 (last visited 11/24/08). Michael Nietzel is MSU's president. *Id.* Public records show  
6 that MSU is a federal government contractor as that term is defined in 11 C.F.R. § 115.1,  
7 because it entered into multiple contracts with federal governmental agencies between  
8 October 30, 2005, and October 9, 2007, a period that includes the alleged activities. *Id.*

9 Roy Blunt is a sitting congressman. His 2008 principal campaign committee is  
10 Friends of Roy Blunt. Commission records show that Rep. Blunt filed a Statement of  
11 Candidacy for the 2008 election on January 5, 2007.

12 On December 15, 2006, MSU's Board of Governors passed a resolution naming a  
13 new science facility at the Springfield, Missouri, campus the "Roy Blunt Jordan Valley  
14 Innovation Center." The resolution noted Rep. Blunt's background as an MSU alumnus  
15 and a longtime public servant with Missouri state and local governments, and it stated  
16 that the facility was being named in recognition of Rep. Blunt's "unique contributions" to  
17 the facility and his "crucial role" in supporting the facility. An MSU press release stated:

18 The fact is that the JVIC facility would not have been  
19 possible without the substantial support of the federal  
20 government, led by Congressman Blunt. He shared the  
21 vision and has been steadfast in his support to make the  
22 vision a reality. This naming is very fitting.

23  
24 See <http://www.news.missouristate.edu/releases/30967.htm> (last visited 10/28/08). At  
25 the time of the naming resolution, Rep. Blunt had recently won re-election to his  
26 congressional seat in Missouri's November 7, 2006, general election. Neither the

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1 minutes of the Board meeting, the Board resolution, nor the MSU press releases mentions  
2 or refers to Rep. Blunt's 2006 re-election or his prospective 2008 candidacy.

3 On May 30, 2007, the new science facility was dedicated at a public naming  
4 ceremony attended by Rep. Blunt and various state and local government officials.  
5 Rep. Blunt's name is listed on signs at the facility and on MSU's website. See  
6 <http://missouristate.edu/research/>. (last visited 11/25/08). A press release announcing the  
7 dedication and opening ceremony echoed the prior release in that it stated:

8 The naming of the building is an appropriate way to say  
9 thank you to Congressman Blunt for his continuous support  
10 of JVIC and Missouri State University.

11  
12 See <http://jvic.missouristate.edu/News/5-24-07MSU.htm>. (last visited 10/28/08). See  
13 also [jvic.missouristate.edu/History.htm](http://jvic.missouristate.edu/History.htm). (last visited 10/28/08). The MSU website  
14 states: "Southwest Missouri Congressman Roy Blunt was instrumental in securing  
15 defense funding for the renovation of the MFA Mill for the creation of Jordan Valley  
16 Innovation Center." See <http://www.missouristate.edu/map/BldgTemplate.asp?b=102>.

17 Complainant alleges that the naming of the facility, press releases, signs, and the  
18 website reference constitute federal election activity under 2 U.S.C. § 431(20)(iii) in  
19 support of the congressman and results in a prohibited in-kind contribution to his  
20 campaign committee.

21 MSU denies that the naming and related activities constitute FEA or an in-kind  
22 contribution to Rep. Blunt. MSU asserts that the naming was not done to influence any  
23 election and that it neither promotes nor supports Rep. Blunt as a federal candidate.  
24 MSU's president submitted an affidavit stating that the facility was named for Rep. Blunt  
25 based on his distinguished service to MSU, the surrounding community, and the

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1 Southwest Missouri region. He further states that the naming was consistent with MSU's  
2 practice of naming facilities after individuals who have provided extraordinary service to  
3 the university. *See* Nietzel Affidavit attached to MSU Response.

4 MSU pointed out that numerous other research universities have named facilities  
5 after sitting congressmen without the naming of the facility being deemed a contribution  
6 to their re-election campaign committees. MSU identified the following facilities:

7 Christopher S. Bond Life Science Center at University of Missouri – Columbia; William  
8 L. Clay Building at University of Missouri - St. Louis; Christopher S. Bond Science and  
9 Technology Incubator at Missouri Western University; Robert C. Byrd Health Science  
10 Center at West Virginia University; Robert C. Byrd Center for Rural Health at Marshall  
11 University; and Robert C. Byrd Institute in West Virginia (multi-university).

12 **B. Discussion**

13 The Act and Commission regulations prohibit federal contractors from making a  
14 contribution or expenditure for the purpose of influencing a federal election. *See*  
15 2 U.S.C. § 441c(a); 11 C.F.R. § 115.2(a). A contribution or expenditure includes any  
16 gift, subscription, payment, loan, advance, or deposit of money or anything of value made  
17 by any person for the purpose of influencing any election for federal office.<sup>1</sup> *See*  
18 2 U.S.C. §§ 431(8) and (9); 11 C.F.R. §§ 100.52 and 100.111.

19 Complainant alleges that naming the facility after Rep. Blunt constitutes a  
20 prohibited in-kind contribution, because it provides something of value to Rep. Blunt's

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<sup>1</sup> The term "contribution" also includes the payment by any person of compensation for the personal services of another person that are rendered to a political committee without charge for any purpose. 2 U.S.C. § 431(8)(ii); 11 C.F.R. § 100.54. MSU asserts that it made no payment to Rep. Blunt for personal services or made any tangible gift of anything, and the available information does not show that it did.

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1 re-election campaign committee. Complainant links the naming activity to the  
2 congressional campaign by alleging that because the naming constitutes a public  
3 communication promoting or supporting a federal candidate, the naming activity could be  
4 considered FEA pursuant to 2 U.S.C. § 431(20)(iii) if conducted by political party  
5 committee.

6       These conclusions are wrong for three reasons. First, MSU is not subject to the  
7 same restrictions as political party committees, and there is no basis to conclude that the  
8 naming activities were for the purpose of influencing a federal election. Comparing  
9 MSU to a political party committee is inapt, because such political party committees are  
10 by definition organized for the purpose of influencing elections, a purpose that MSU  
11 lacks. Even if the analogy did apply, the naming activities are not FEA, because they  
12 either are not "public communications" of the type covered by the FEA restrictions, or  
13 they do not promote or support Rep. Blunt. Second and third, the naming activities do  
14 not constitute expenditures or contributions under the Act because they do not expressly  
15 advocate the election of Rep. Blunt and do not appear to have been coordinated with his  
16 campaign.

17                   **1. MSU Did Not Fund A Federal Election Activity**

18       The allegation that the naming of the facility is FEA pursuant to 2 U.S.C.  
19 § 431(20)(iii), has no legal significance. While the Act and Commission regulations  
20 would restrict political party committees, federal and nonfederal candidates, and the  
21 candidates' committees from engaging in the type of FEA alleged in the complaint, *see*  
22 2 U.S.C. § 441i, this restriction does not appear to apply to an organization such as MSU.

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1           **Even if the restriction applied, the facts do not indicate that MSU engaged in any**  
2 **FEA, which includes a public communication that refers to a clearly identified candidate**  
3 **for federal office (regardless of whether a candidate for State or local office is also**  
4 **mentioned or identified) and that promotes or supports a candidate for that office, or**  
5 **attacks or opposes a candidate for that office (regardless of whether the communication**  
6 **expressly advocates a vote for or against a candidate). See 2 U.S.C. § 431(20)(iii);**  
7 **11 C.F.R. § 100.24(b)(3).**

8           **A public communication is defined as a communication by means of any**  
9 **broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising**  
10 **facility, mass mailing, or telephone bank to the general public, or any other form of**  
11 **general public political advertising. See 2 U.S.C. § 431(22); 11 CFR § 100.26. It is**  
12 **questionable whether any of MSU's building signage, press releases, or website**  
13 **references to the new facility constitute public communications. The MSU press releases**  
14 **would only qualify as a public communication for the purposes of the Act if there were**  
15 **more than 500 copies distributed as a mass mailing under 11 CFR § 100.27. There is no**  
16 **indication that more than 500 copies of the releases were mailed. Further, the MSU**  
17 **building signs would only qualify as a public communication if they constitute an**  
18 **"outdoor advertising facility," which seems highly debatable, and the website references**  
19 **appear exempt under Commission regulations at 11 CFR § 100.26. In sum, the available**  
20 **information does not show that any of the alleged naming activities constitute public**  
21 **communications.**

22           **Further, the Commission has concluded that the mere identification of a federal**  
23 **candidate is not itself tantamount to promoting, supporting, attacking, or opposing that**

1 candidate. See Advisory Opinions 2007-34 (Jackson, Jr.), 2007-21 (Holt), and 2003-25  
2 (Weinzapfel). Thus, only MSU's communications that directly promoted or supported,  
3 rather than merely identified Rep. Blunt would even be eligible for consideration as FEA.  
4 Thus, simple references to Rep. Blunt's name on building signs and the MSU website  
5 cannot be considered FEA. Only the two press releases, which praise Rep. Blunt's  
6 efforts to obtain funding for the new facility, could be construed as promoting or  
7 supporting him. However, neither of the press releases mentions Rep. Blunt's candidacy  
8 or refers to any election. Given the open question as to whether these press releases even  
9 constituted public communications, there is no basis on which to conclude that this would  
10 constitute FEA.

## 11 2. MSU Did Not Make An Independent Expenditure

12 An independent expenditure is an expenditure for a communication expressly  
13 advocating the election or defeat of a clearly identified candidate that is not coordinated  
14 with such candidate, the candidate's authorized political committee, their agents, or a  
15 political party. 2 U.S.C. § 431(17); 11 C.F.R. § 100.16. A person (other than a political  
16 committee) who makes an independent expenditure aggregating \$10,000 or more at any  
17 time up to the 20th day before the date of an election is required to file a report with the  
18 Commission describing the expenditure within 48 hours of making the expenditure.  
19 2 U.S.C. § 434(g)(2)(A); 11 C.F.R. § 109.10(c). If any of MSU's naming activities  
20 expressly advocated Rep. Blunt's election, the associated costs would be a prohibited  
21 independent expenditure.

22 Under the Commission's regulations, a communication contains express advocacy  
23 when it uses phrases such as "vote for the President," "re-elect your Congressman," or

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1 "Smith for Congress," or uses campaign slogans or words that in context have no other  
2 reasonable meaning than to urge the election or defeat of one or more clearly identified  
3 candidates, such as posters, bumper stickers, or advertisements that say, "Nixon's the  
4 One," "Carter '76," "Reagan/Bush," or "Mondale!" See 11 C.F.R. § 100.22(a); see also  
5 *FEC v. Massachusetts Citizens For Life*, 479 U.S. 238, 249 (1986) ("[The publication]  
6 provides in effect an explicit directive: vote for these (named) candidates. The fact that  
7 this message is marginally less direct than "Vote for Smith" does not change its essential  
8 nature.").

9 The Commission's regulations further provide that express advocacy includes  
10 communications containing an "electoral portion" that is "unmistakable, unambiguous,  
11 and suggestive of only one meaning" and about which "reasonable minds could not differ  
12 as to whether it encourages actions to elect or defeat" a candidate when taken as a whole  
13 and with limited reference to external events, such as the proximity to the election. See  
14 11 C.F.R. § 100.22(b).<sup>2</sup> In its discussion of then-newly promulgated section 100.22, the  
15 Commission stated that "communications discussing or commenting on a candidate's  
16 character, qualifications or accomplishments are considered express advocacy under new  
17 section 100.22(b) if, in context, they have no other reasonable meaning than to encourage

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<sup>2</sup> The U.S. Supreme Court recently held that "an ad is the functional equivalent of express advocacy, and thus subject to the ban on corporate funding of electioneering communications, only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." See *FEC v. Wisconsin Right to Life, Inc.*, 127 S.Ct. 2652, 2667 (2007) ("*WRTL*"). Although 11 C.F.R. § 100.22 was not at issue in *WRTL*, the Court described "indicia of express advocacy" to include the "mention [of] an election, candidacy, political party, or challenger" or whether the communication "take[s] a position on a candidate's character, qualifications, or fitness for office." *Id.* The Commission subsequently incorporated the *WRTL* principles into its regulations governing permissible uses of corporate and labor organization funds for electioneering communications at 11 C.F.R. § 114.15. See Final Rule on Electioneering Communications, 72 Fed. Reg. 72899, 72914 (Dec. 26, 2007).

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1 actions to elect or defeat the candidate in question." See 60 Fed. Reg. 35292, 35295 (July  
2 6, 1995).

3 The naming of the MSU science facility did not involve language that would  
4 satisfy 11 C.F.R. § 100.22(a) or (b). A recent Commission decision addressing the use of  
5 a federal candidate's name is instructive in evaluating this matter. In MURs 5779 and  
6 5805 (City of Santa Clarita), an incorporated municipality created and paid for 14 large  
7 banners publicly thanking a sitting congressman by name for introducing a bill in  
8 Congress that was favorable to the municipality. The banners, which were displayed  
9 throughout the city, stated, "Thank you Buck for H.R. 5471! – No Mega Mining in  
10 Soledad Canyon." See Commission Factual and Legal Analysis approved on March 30,  
11 2007. The Complainant in those MURs alleged that the banners were independent  
12 expenditures because they advocated the re-election of Rep. Howard P. "Buck" McKeon.  
13 The Commission concluded that the banners did not expressly advocate Rep. McKeon's  
14 candidacy, since they made no reference to an election or contained any explicit electoral  
15 language. See Commission Certification dated March 30, 2007.

16 In this matter, it does not appear that MSU's naming activities would qualify as  
17 express advocacy under either 11 C.F.R. § 100.22(a) or (b). First, neither the naming  
18 ceremony, press releases, outdoor signs, nor MSU website postings appear to contain  
19 any of the "magic words" or their equivalent under 11 C.F.R. § 100.22(a). Second, the  
20 activities do not appear to have any electoral portion that is unmistakable, unambiguous,  
21 and suggestive of only one meaning under 11 C.F.R. § 100.22(b). Significantly,  
22 Complainant provides no evidence, and the available information does not indicate or  
23 even suggest, that the naming ceremony, press releases, outdoor signs, or MSU website

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1 postings mention or refer to Rep. Blunt's 2008 candidacy. Therefore, as with the  
2 banners in the Santa Clarita matter, it does not appear that any of MSU's public  
3 statements regarding the naming of the science facility expressly advocated the election  
4 of the named congressman. Thus, MSU did not make a prohibited independent  
5 expenditure.

### 6 3. MSU Did Not Make A Coordinated Communication

7  
8 Under the Act, an expenditure made by any person "in cooperation, consultation,  
9 or concert, with, or at the request or suggestion of, a candidate, his authorized political  
10 committees, or their agents" constitutes an in-kind contribution. 2 U.S.C.

11 § 441a(a)(7)(B)(i). As a federal contractor, MSU would be prohibited from paying for a  
12 coordinated communication. See 11 C.F.R. § 109.22.

13 Although Complainant makes no specific allegation that MSU coordinated with  
14 either Rep. Blunt, his campaign committee, or their agents in naming and publicizing the  
15 science facility, we felt the issue should be addressed as part of the Complainant's  
16 allegation that the naming constituted an in-kind contribution. As an initial matter, there  
17 is no information in the record to indicate that MSU named the facility at the request or  
18 suggestion of Rep. Blunt, or that he played a role in or influenced any MSU disbursement  
19 relating to the naming of the facility.

20 In characterizing the purported benefit to Rep. Blunt, Complainant focuses on the  
21 fact that Rep. Blunt's name was mentioned in building signage, on the MSU press  
22 releases, and on the MSU website. As discussed below, however, these references do not  
23 constitute coordinated communication that would cause an in-kind contribution. A  
24 communication is coordinated with a candidate, a candidate's authorized committee, or

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1 their agents when the communication satisfies the following three-pronged test set forth  
2 in the Commission's regulations at 11 C.F.R. § 109.21(a): (1) the communication is paid  
3 for by a person other than a candidate, the candidate's authorized committee, or their  
4 agents; (2) the communication satisfies at least one of the content standards set forth in  
5 11 C.F.R. § 109.21(c); and (3) the communication satisfies at least one of the conduct  
6 standards set forth in 11 C.F.R. § 109.21(d).<sup>3</sup>

7 The payment prong of 11 C.F.R. § 109.21(a)(1) appears satisfied in this matter,  
8 since MSU appears to have paid for the activities related to naming and publicizing the  
9 facility. However, neither the content nor the conduct prongs appear to be satisfied.

10 It does not appear that MSU's activities related to naming the facility satisfy any  
11 of the four content standards required under 11 C.F.R. § 109.21(c). In sum, it does not  
12 appear that MSU made any: (1) electioneering communication; (2) public  
13 communication that republished, disseminated, or distributed, in whole or part, a  
14 candidate's campaign materials; (3) public communication that contained express  
15 advocacy; or (4) a public communication within a 90-day period prior to an election.  
16 See 11 C.F.R. § 109.21(c).

17 As previously mentioned in this report, it is doubtful that any of MSU's naming  
18 activities even qualify as a public communication. Significantly, even if any of the

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<sup>3</sup> The Commission revised 11 C.F.R. § 109.21, effective July 10, 2006, following an appellate court decision that invalidated the fourth, or "public communication" content standard at 11 C.F.R. § 109.21(c)(4). *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005). In a subsequent challenge by Shays, the U.S. District Court for the District of Columbia held that the Commission's content and conduct standards of the coordinated communications regulation at 11 C.F.R. § 109.21(c) and (d) violated the Administrative Procedure Act; however, the court did not vacate the regulations or enjoin the Commission from enforcing them. See *Shays v. F.E.C.*, 508 F. Supp.2d 10, 70-71 (D.D.C. Sept. 12, 2007) (NO. CIV.A. 06-1247 (CKK)) (granting in part and denying part the respective parties' motions for summary judgment). Recently, the D.C. Circuit affirmed the district court with respect to, *inter alia*, the 90- and 120-day time frames in the "public communication" content standard. See *Shays v. F.E.C.*, 528 F.3d 914 (D.C. Cir. 2008).

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1 naming activities qualify as a public communication, they do not appear to be any of the  
2 types of public communications necessary to satisfy the content standard, in that they (1)  
3 do not constitute electioneering communications (which require use of broadcast media  
4 such as radio or television); (2) do not constitute republication of campaign materials; (3)  
5 do not include express advocacy (*see* discussion above); or (4) did not occur within 90  
6 days of a federal election. *See* 11 C.F.R. § 109.21(c)(1)-(4).

7 Finally, MSU's naming activities do not satisfy any of the applicable conduct  
8 standards. There is no information to suggest that Rep. Blunt or his campaign committee  
9 or their agents requested or suggested that the facility be named after him, or that they  
10 were materially involved or had substantial discussions with MSU about naming the  
11 facility. *See* 11 C.F.R. § 109.21(d)(1), (2), and (3). Furthermore, it does not appear that  
12 the activities involve a common vendor, former campaign employee, or the  
13 dissemination, distribution, or republication of campaign materials. *See* 11 C.F.R.  
14 § 109.21(d)(4), (5), and (6). Therefore, it does not appear that MSU made a coordinated  
15 communication by naming the science facility after Rep. Blunt.

#### 16 4. Conclusion

17 The available information does not show that MSU engaged in FEA, or made  
18 either an independent expenditure or a coordinated communication, by naming its science  
19 facility after Rep. Blunt. Although Complainant argues that naming the facility after  
20 Rep. Blunt enhances his name recognition, in the absence of any electoral advocacy, it  
21 does not appear to be anything of value made "for the purpose of influencing" a federal  
22 election. Accordingly, we recommend that the Commission find no reason to believe  
23 MSU violated the Act and close the file.

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1 **III. RECOMMENDATIONS**

- 2 1. Find no reason to believe Missouri State University violated the Act.  
3  
4 2. Approve the attached Factual and Legal Analysis.  
5  
6 3. Approve the appropriate letters.  
7  
8 4. Close the file.  
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12 **Thomasenia P. Duncan**  
13 **General Counsel**

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16  
17 12/24/09  
18 **Date**

19  
20  
21 **BY:**

Stephen Gura  
22 **Stephen Gura**  
23 **Deputy Associate General Counsel**  
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Mark Shonkwiler by gf  
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