



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

October 12, 2000

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon *JAP*
Staff Director

FROM: Lawrence M. Noble
General Counsel

BY: Kim Leslie Bright *KL Bright*
Associate General Counsel

Gregory R. Baker *GR Baker*
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COMMISSION

SUBJECT: Statements of Reasons -- Requests to Deny Certification of Public Funds to Patrick J. Buchanan and Ezola Foster (LRA #598/599)

On September 28, 2000, this Office circulated the draft Statements of Reasons addressing the requests to deny certification of public funds to Patrick J. Buchanan and Ezola Foster. The draft Statements included language that concluded that the submissions were not properly before the Commission at subsection III.B.1. However, on October 3, 2000, the Commission failed by a vote of 3-3 to approve the rationale set forth at subsection III.B.1. The Commission approved the rationale set forth at subsection III.B.2. by a vote of 5-0 (substantive arguments supporting denial of requests). As a result, this Office is circulating the attached Statements of Reasons which delete subsection III.B.1. as a basis for denying the requests. See Attachments A and B. This Office has also modified the first part of section III.B. to delete references to the requests not being properly before the Commission.

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Approve the attached draft Statements of Reasons denying the requests to deny certification of public funds to Patrick J. Buchanan and Ezola Foster; and
2. Approve the appropriate letters.

Attachments

- A. Proposed Statement of Reasons Denying Mr. James Mangia's Submission Requesting that the Commission Deny Certification of Public Funds to Mr. Patrick Buchanan and Ms. Ezola Foster.
- B. Proposed Statement of Reasons Denying the New York Delegation's Submission Requesting that the Commission Deny Certification of Public Funds to Mr. Patrick Buchanan and Ms. Ezola Foster.

1 § 9003.1. In a letter dated August 24, 2000, the Commission requested that the
2 candidates provide evidence demonstrating that they had qualified to appear on the
3 general election ballot in ten or more states as nominees of the Reform Party.
4 Subsequently, on August 25, 28 and 29, 2000, the candidates submitted documentation
5 indicating that they have qualified to appear on the general election ballots as the
6 nominees of the Reform Party in at least ten states.

7 In his submission, Mr. Mangia alleges that Mr. Buchanan “knowingly and
8 willfully submitted and/or are preparing to knowingly and willfully submit false, fictitious
9 and fraudulent information to the FEC, in violation of Federal Campaign Funding Law.”¹
10 See Attachment 1, page 4. As a result, Mr. Mangia requests that until these allegations
11 are fully investigated, the Commission should “withhold making its decision regarding
12 certification of the Reform Party nominee for the Office of the President of the United
13 States.” *Id.* at 14.

14 The challenge asserts that Patrick J. Buchanan and his supporters attempted to
15 “override the directives and resolutions by the PNC [Presidential Nominating Committee]
16 and the Executive Committee and the proper and lawfully constituted Reform Party of the
17 United States of America, now that the respondents have control of a rogue faction,
18 claiming to be the Reform Party of the United States of America.” *Id.* at 12. Mr. Mangia
19 asserts that Mr. Buchanan and his supporters sought to abolish the Rules for the selection
20 of Reform Party of the United States Nominees for President and Vice President of the
21 United States, which is expressly prohibited in a presidential election year, “and conduct

¹ In his supplement, Mr. Mangia provided updated information regarding Mr. Buchanan’s nomination and additional evidence supporting his claims. See Attachment 3.

1 an invalid floor vote at an illegal convention, or utilize the invalid and improper ballots to
2 purportedly win the Reform Party Primary, and thereby wrongfully and fraudulently
3 attempt to become the purported Reform Party Nominee for the Office of the President of
4 the United States.” *Id.* at 12-13.

5 The challenge concludes that the actions by Mr. Buchanan and his supporters
6 constitute balloting and voter fraud. *Id.* at 13. Moreover, Mr. Mangia alleges that any
7 representation to the Commission by Patrick Buchanan that he is the valid and lawful
8 Reform Party nominee for Office of the President of the United States, constitutes a false,
9 fictitious, and fraudulent representation to the Commission, in violation of 26 U.S.C.
10 § 9012(d)(1).

11 Mr. Mangia also alleges that Angela “Bay” Buchanan violated the law by
12 demanding that the Reform Party enter into a “secret agreement” to keep the names on
13 the “Pat Buchanan supporter list” secret.² *Id.* at 13. The challenge states that federal
14 election laws make it a criminal offense for the administrators of a presidential primary
15 election to fail to retain the records of the primary for a period of 22 months, and that it is
16 a crime for anyone to destroy such records before expiration of the 22-month period. *Id.*
17 *See* 42 U.S.C. § 1974.

18 In his response to Mr. Mangia’s submission, Mr. Buchanan asserts that the
19 allegations involve matters relating solely to the “internal operations of the Reform Party
20 of the United States of America, which are governed by its Constitution and other
21 organizational documents, and not by the Act or the Fund Act.” *See* Attachment 3, at 1

² The “Pat Buchanan supporter list” consisted of 500,000 names which were submitted to the Reform Party Nominating Committee for the purpose of participating in the Reform Party presidential primary. *See* Attachment 1, at 27.

1 and 2. Mr. Buchanan states that the Commission should not consider submissions "about
2 the internal processes of the Reform Party leading up to the Convention or at the
3 Convention, such as the seating of Convention delegates." *Id.* at 5. Mr. Buchanan further
4 contends that the Commission should look only to the results of the Reform Party
5 Convention, and should not "entertain Mr. Mangia's allegations of irregularity in the
6 process under the Reform Party Rules." *Id.* at 7. Moreover, Mr. Buchanan asserts that
7 he and Ms. Foster were in fact nominated by the Reform Party Convention and that any
8 statement to the contrary is false. Mr. Buchanan asserts that the representation that John
9 Hagelin is the nominee for the Office of President of the United States for the Reform
10 Party of the United States of America is invalid, "as it has absolutely no legal support,
11 and is clearly a claim asserted without authorization from the official Reform Party of the
12 United States of America." *Id.* at 6. In addition, Mr. Buchanan asserts that Mr. Mangia's
13 behavior at the National Committee Meeting demonstrates a lack of "good faith" on the
14 part of Mr. Mangia and Dr. Hagelin. *Id.* at 9. Accordingly, Mr. Buchanan requests that
15 the Commission dismiss Mr. Mangia's submission. *Id.* at 10.

16 **III. COMMISSION DECISION**

17 **A. LEGAL FRAMEWORK**

18 The Fund Act provides that the eligible candidates of a minor party in a
19 presidential election shall be entitled to pre-election funding. 26 U.S.C. § 9004(a)(2)(A).
20 *See also* 11 C.F.R. § 9004.2(b). Under 26 U.S.C. § 9004(a)(2), the amount of the minor
21 party candidate's entitlement is the proportionate amount of the funding available for
22 major party general election candidates, based on the ratio of the total popular votes
23 received by the minor party candidate in the preceding election compared to the average

1 of the total popular votes received by the major party candidates for President in that
2 election. *See also* 11 C.F.R. § 9004.2(b). The Fund Act provides that the Commission
3 shall certify to the Secretary of the Treasury payment to eligible candidates in the full
4 amount to which they are entitled not later than 10 days after they have met all applicable
5 conditions for eligibility. 26 U.S.C § 9005(a). *See also* 11 C.F.R. § 9005.1(b).

6 The Fund Act defines "candidate" as an individual who has been nominated for
7 election to the office of President of the United States or the office of Vice President of
8 the United States by a major party, or has "qualified to have his name on the election
9 ballot (or to have the names of electors pledged to him on the election ballot) as the
10 candidate of a political party for election to either such office in 10 or more states." 26
11 U.S.C. § 9002(2).

12 The Commission's regulations define "political party" as an "association,
13 committee, or organization which nominates or selects an individual for election to any
14 Federal office, including the office of President or Vice President of the United States,
15 whose name appears on the general election ballot as the candidate of such association,
16 committee, or organization." 11 C.F.R. § 9002.15.

17 The Commission has on several occasions considered petitions to deny
18 certification of public funds to presidential candidates. *See, e.g., In re Carter-Mondale*
19 *Reelection Committee, Inc.*, 642 F.2d 538 (D.C. Cir. 1980). Additionally, the
20 Commission has acted to deny funds based on information obtained internally, without a
21 petition from an interested party, or based on inadequacies detected in a candidate's
22 submission for matching funds. *See, e.g., Committee to Elect Lyndon LaRouche v. FEC*,

1 613 F.2d 834 (D.C. Cir. 1979) ("*CTEL*"); *LaRouche v. FEC*, 996 F.2d 1263 (D.C. Cir.
2 1993).

3 The Court of Appeals for the District of Columbia Circuit considered
4 Commission action with respect to the matching fund certification process during the
5 1976 presidential election cycle and the submission of Lyndon LaRouche. *See CTET*,
6 613 F.2d 834. In that case, the Commission denied Mr. LaRouche's submission for
7 matching funds because of irregularities uncovered during an audit of his threshold
8 submission. The *CTEL* court stressed the importance of "prompt payments to eligible
9 candidates" so that they "will have the money [they] need at a time when its availability is
10 most important to [the] campaign." *Id.* at 841. The court also noted that the "policy
11 favoring prompt payments to eligible candidates ... circumscribe[s] to a certain extent the
12 scope of the Commission's investigative role during the certification process." *Id.*
13 Nevertheless, the D.C. Circuit upheld the Commission's action holding that the
14 Commission may reject certification if a matching fund request: (1) was not properly
15 documented to meet threshold requirements, and (2) contained "patent irregularities
16 suggesting the possibility of fraud." *Id.* at 842.

17 During the 1980 election cycle, the Commission received a petition from the
18 Carter-Mondale Reelection Committee, Inc. asserting that presidential candidate Ronald
19 Reagan and vice-presidential candidate George Bush were not eligible for public funding
20 in the general election based on various newspaper accounts reporting that certain laws
21 had been or would be violated by the candidates. While the petition was pending before
22 the Commission, the Carter-Mondale Committee petitioned the D.C. Circuit to adjudicate
23 the issue. Following the Commission's certification of funds to the Reagan-Bush

1 campaign, the D.C. Circuit ruled that the petition filed with it was "premature on the
2 statutory ground that it violates the FEC's exclusive jurisdiction." *In re Carter-Mondale*,
3 642 F.2d at 543. The court reiterated its position from the *CTEL* case that the
4 Commission can investigate allegations concerning the certification of public funds when
5 it "reasonably appears that a patent fraud or other major violation of law is being
6 committed," while also being cautious to avoid "overstep[ping] its authority by
7 interfering unduly in the conduct of elections." *Id.* at 544-45. The court also criticized
8 the allegations made by the Carter-Mondale Committee as addressing future conduct and
9 for being "highly speculative." *Id.* at 543.³

10 During the 1992 election cycle, the Commission denied certification to Lyndon
11 LaRouche and considered a petition to deny public funding to the Clinton/Gore '92
12 General Election Committee. The Commission's denial of certification to Mr. LaRouche,
13 which was based on his prior transactions with the Commission and his federal
14 conviction on fraud charges, was overturned by the D.C. Circuit which ruled that the
15 Commission was "not authorized to appraise candidates' good faith, honesty, probity, or
16 general reliability." *LaRouche v. FEC*, 996 F.2d 1263, 1267 (D.C. Cir. 1993). The court
17 noted that "any inquiry into the bonafides of candidates' promises would take the
18 Commission into highly subjective territory that would imperil the assurance of even-
19 handed treatment." *Id.*

³ In the 1984 election cycle, the National Conservative Political Action Committee filed a complaint against Walter Mondale and Geraldine Ferraro, requesting that the Commission withhold certification of public funds to their general election campaign. Similarly, the Republican National Committee and others petitioned to stop the certification of payment of public funds to the general election campaign of Michael Dukakis and Lloyd Bentsen in 1988. In both cases, the Commission denied the requests on the basis that the requests did not satisfy the standards set forth in *In re Carter-Mondale* for denying certification of funds insofar as patent fraud or a major violation of the law could not be detected. The D.C. Circuit affirmed the

1 In the same election cycle, the Commission considered a petition filed by the
2 Republican National Committee ("RNC") against the Clinton/Gore '92 campaign
3 wherein the RNC alleged that the Clinton/Gore campaign impermissibly received funding
4 from the Democratic National Committee through payments for a "town meeting." The
5 Commission rejected the petition since it did not reasonably appear that patent fraud or
6 violations occurred in the subject transaction which would require the withholding of
7 payments. See *In re Carter-Mondale*, 642 F.2d at 544. The Commission noted that the
8 underlying factual issues were in dispute, and that the appropriate forum to address the
9 questions was the enforcement or audit context. Statement of Reasons, *Petition to Deny*
10 *Certification of Matching Funds to Governor Bill Clinton*, approved June 25, 1992.

11 Further applying the standards articulated by the courts, the Commission rejected
12 three requests to suspend or deny certification of public funds in the 1996 presidential
13 election cycle. See Statement of Reasons, *Request to Deny Public Funds to H. Ross*
14 *Perot and Perot '96*, approved October 17, 1996 (the Commission denied the request by
15 Mr. Herb Rosenberg to deny certification of public funds to Mr. Perot's 1996 general
16 election campaign); Statement of Reasons, *Petition to Deny Certification of Matching*
17 *Funds to the Dole for President Committee*, approved August 8, 1996 (the Commission
18 denied the request by the Democratic National Committee to suspend matching payments
19 to the Dole for President Committee); Statement of Reasons, *Petition to Deny*
20 *Certification of Matching Funds to the Clinton/Gore '96 Primary Committee, Inc.*,
21 approved September 12, 1996 (the Commission denied the request by the Dole for

Commission's decision to deny the RNC's petition to the stop certification of payments to Dukakis/Bentsen.
See *Boulter v. FEC*, No. 88-1541 (D.C. Cir., August 3, 1988).

1 President Committee to suspend matching payments to the Clinton/Gore '96 Primary
2 Committee).

3 The Presidential Election Campaign Fund Act makes it unlawful for any person to
4 knowingly and willfully furnish false, fictitious, or fraudulent evidence or information to
5 the Commission relevant to a certification by the Commission. 26 U.S.C.
6 § 9012(d)(1)(A). The Fund Act provides for criminal penalties for any person who
7 violates this provision. 26 U.S.C. § 9012(d)(2).

8 Under the Civil Rights Act of 1960, every officer of an election is required to
9 "retain and preserve, for a period of twenty-two months all records and papers which
10 come into his possession relating to any application, registration, payment of poll tax, or
11 other act requisite to voting in such election" 42 U.S.C. § 1974. The Civil Rights Act
12 further provides that, "[a]ny officer of election or custodian who willfully fails to comply
13 with this section shall be fined not more than \$1,000 or imprisoned not more than one
14 year, or both." *Id.*

15 **B. DISCUSSION**

16 The Commission has rejected Mr. Mangia's request to deny certification of
17 Patrick J. Buchanan and Ezola Foster for public funding for the 2000 general election.
18 The allegations made against Mr. Buchanan and Ms. Foster do not satisfy the substantial
19 burden that must be met to withhold certification of public funds. While not purely
20 ministerial, the Commission's review of public funding applications is limited to
21 determining whether the applications adequately comply with the eligibility requirements
22 set forth in the Fund Act. The Fund Act obligates the Commission to make an initial
23 determination within 10 days of the candidate's meeting all applicable conditions for

1 eligibility. 26 U.S.C. § 9005. Absent patent irregularities suggesting the possibility of
2 fraud, the Commission is precluded from withholding funds from a candidate "once the
3 objective criteria for eligibility are met, because of the important constitutional free
4 speech considerations inherent in public campaign financing." *In re Carter-Mondale*
5 *Reelection Committee, Inc.*, 642 F.2d 538, 544 (D.C. Cir. 1980). To justify withholding
6 funding, the Commission should have a reasonable belief that patent fraud or another
7 major violation has occurred. *See LaRouche*, 996 F.2d at 1267. The Commission should
8 also avoid basing its findings on speculative allegations and should favor a policy that
9 allows for prompt payments of public funds, even if it must forgo a thorough
10 investigation at the initial stage. *CTEL*, 613 F.2d at 841. The Commission does not
11 possess evidence that Mr. Buchanan's application for public funds contains patent
12 irregularities or the possibility of fraud.

13 Moreover, Mr. Mangia's allegations primarily relate to the Reform Party's
14 internal rules and procedures. The Fund Act's definition of "candidate" explicitly
15 requires the Commission to rely on the states' determinations of who appears on the
16 general election ballot for each party. *See* 26 U.S.C. § 9002(2)(B); 11 C.F.R.
17 § 9002.2(a)(2). The Commission should not entangle itself in the complexities of party
18 rules or procedures as the Fund Act does not define eligibility in terms of a political
19 party's actions. Thus, the Commission should not substitute its own judgment for that of
20 a state with regard to who should appear on a state ballot as a party nominee. *See*
21 *Statement of Reasons, Request to Deny Funds to H. Ross Perot and Perot '96*, approved
22 October 17, 1996. Similarly, Mr. Mangia's submission relates to events of competing
23 factions of the Reform Party and raises questions regarding which faction is the "true"

1 Reform Party. However, the Commission's regulations indicate that a "political party" is
2 an association that nominates or selects an individual for federal office whose name
3 appears on the general election ballot as the candidate for that association. See 11 C.F.R.
4 § 9002.15. As Mr. Buchanan and Ms. Foster have submitted documentation
5 demonstrating that they have qualified to appear on numerous general election ballots as
6 Reform Party candidates, they meet the Fund Act's definition of "candidate," and the
7 Reform Party, under whose designation they run, meets the definition of "political
8 party." See also Advisory Opinion 1998-2 (The Commission has recognized the Reform
9 Party as a political party).

10 Finally, Mr. Mangia alleges violations of the criminal provisions of the Fund Act
11 and the Civil Rights Act of 1960. While the Commission has exclusive jurisdiction for
12 the civil enforcement of the Fund Act, the Department of Justice is charged with
13 prosecuting violations of the Civil Rights Act of 1960. Such violations are not relevant to
14 certification decisions under the Fund Act. Rather, they are more appropriately
15 considered in the context of an enforcement matter, audit, or similar investigation.

16 Therefore, consistent with past Commission practice and judicial precedent, the
17 Commission rejects the request by James Mangia to withhold certification of public funds
18 to Mr. Buchanan and Ms. Foster.

19 **IV. COMMISSION DETERMINATION**

20 For the foregoing reasons, the Commission has denied the request of Mr. James
21 Mangia to deny certification of public funds for the 2000 general election to Mr. Patrick
22 J. Buchanan and Ms. Ezola Foster.

23

1 Attachments

- 2 1. Mr. James Mangia's Submission Requesting that the Commission Deny
3 Certification of Public Funds to Patrick Buchanan and Ezola Foster, dated
4 August 10, 2000.
5
6 2. Supplement to Mr. James Mangia's Submission, dated August 29, 2000.
7
8 3. Mr. Patrick J. Buchanan's Response, dated September 5, 2000.
9

1 On August 14 and 18, 2000, Mr. Buchanan and Ms. Foster submitted letters of
2 candidate agreements and certifications pursuant to 26 U.S.C. § 9003(c) and 11 C.F.R.
3 § 9003.1. In a letter dated August 24, 2000, the Commission requested that the
4 candidates provide evidence demonstrating that they had qualified to appear on the
5 general election ballot in ten or more states as nominees of the Reform Party.
6 Subsequently, on August 25, 28 and 29, 2000, the candidates submitted documentation
7 indicating that they have qualified to appear on the general election ballots as the
8 nominees of the Reform Party in at least ten states. As a result, Mr. Buchanan and Ms.
9 Foster met the applicable conditions to receive pre-election public funding on August 29,
10 2000.

11 In their submission, the New York Delegation asserts that Patrick Buchanan and
12 Ezola Foster cannot claim to be the nominees of the Reform Party since "they and those
13 acting on their behalf subverted and then rescinded the Reform Party primary and were
14 nominated by a convention which accepted delegates not on the basis of the Reform Party
15 constitution, but on the basis of whether or not they supported Mr. Buchanan."
16 Attachment 1, page 6. The challenge states that another convention was held
17 simultaneously which claimed to be the legitimate Reform Party convention, and that this
18 convention seated the New York Delegation and recognized John Hagelin as the winner
19 of the national primary in light of Mr. Buchanan's disqualification. *Id.* As a result, the
20 New York Delegation requests that the Commission "not certify Patrick J. Buchanan and
21 Ezola Foster as the recipients of general election funds pursuant to 26 U.S.C. § 9005, and
22 that he be further sanctioned for the illegal actions described herein." *Id.* at 7.

1 **III. COMMISSION DECISION**

2 **A. LEGAL FRAMEWORK**

3 The Presidential Campaign Fund Act ("the Fund Act") provides that the eligible
4 candidates of a minor party in a presidential election shall be entitled to pre-election
5 funding. 26 U.S.C. § 9004(a)(2)(A). *See also* 11 C.F.R. § 9004.2(b). Under 26 U.S.C.
6 § 9004(a)(2), the amount of a minor party candidate's entitlement is the proportionate
7 amount of the funding available for major party general election candidates, based on the
8 ratio of the total popular votes received by the minor party candidate in the preceding
9 election compared to the average of the total popular votes received by the major party
10 candidates for President in that election. *See also* 11 C.F.R. § 9004.2(b). The Fund Act
11 provides that the Commission shall certify to the Secretary of the Treasury payment to
12 eligible candidates in the full amount to which they are entitled not later than 10 days
13 after they have met all applicable conditions for eligibility. 26 U.S.C § 9005(a). *See also*
14 11 C.F.R. § 9005.1(b).

15 The Fund Act defines "candidate" as an individual who has been nominated for
16 election to the office of President of the United States or the office of Vice President of
17 the United States by a major party, or has "qualified to have his name on the election
18 ballot (or to have the names of electors pledged to him on the election ballot) as the
19 candidate of a political party for election to either such office in 10 or more states."
20 26 U.S.C. § 9002(2).

21 The Commission's regulations define "political party" as an "association,
22 committee, or organization which nominates or selects an individual for election to any
23 Federal office, including the office of President or Vice President of the United States,

1 whose name appears on the general election ballot as the candidate of such association,
2 committee, or organization.” 11 C.F.R. § 9002.15.

3 The Commission has on several occasions considered petitions to deny
4 certification of public funds to presidential candidates. *See, e.g., In re Carter-Mondale*
5 *Reelection Committee, Inc.*, 642 F.2d 538 (D.C. Cir. 1980). Additionally, the
6 Commission has acted to deny certification of funds based on information obtained
7 internally, without a petition from an interested party, or based on inadequacies detected
8 in a candidate’s submission for matching funds. *See, e.g., Committee to Elect Lyndon*
9 *LaRouche v. FEC*, 613 F.2d 834 (D.C. Cir. 1979) (“CTEL”); *LaRouche v. FEC*, 996 F.2d
10 1263 (D.C. Cir. 1993).

11 The Court of Appeals for the District of Columbia Circuit considered
12 Commission action with respect to the matching fund certification process during the
13 1976 presidential election cycle and the submission of Lyndon LaRouche. *See CTCL*,
14 613 F.2d 834. In that case, the Commission denied Mr. LaRouche’s submission for
15 matching funds because of irregularities uncovered during an audit of his threshold
16 submission. The *CTEL* court stressed the importance of “prompt payments to eligible
17 candidates” so that they “will have the money [they] need at a time when its availability is
18 most important to [the] campaign.” *Id.* at 841. The court also noted that the “policy
19 favoring prompt payments to eligible candidates ... circumscribe[s] to a certain extent the
20 scope of the Commission’s investigative role during the certification process.” *Id.*
21 Nevertheless, the D.C. Circuit upheld the Commission’s action holding that the
22 Commission may reject certification if a matching fund request: (1) was not properly

1 documented to meet threshold requirements, and (2) contained "patent irregularities
2 suggesting the possibility of fraud." *Id.* at 842.

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4 Carter-Mondale Reelection Committee, Inc. asserting that presidential candidate Ronald
5 Reagan and vice-presidential candidate George Bush were not eligible for public funding
6 in the general election based on various newspaper accounts reporting that certain laws
7 had been or would be violated by the candidates. While the petition was pending before
8 the Commission, the Carter-Mondale Committee petitioned the D.C. Circuit to adjudicate
9 the issue. Following the Commission's certification of funds to the Reagan-Bush
10 campaign, the D.C. Circuit ruled that the petition filed with it was "premature on the
11 statutory ground that it violates the FEC's exclusive jurisdiction." *In re Carter-Mondale*,
12 642 F.2d at 543. The court reiterated its position from the *CTEL* case that the
13 Commission can investigate allegations concerning the certification of public funds when
14 it "reasonably appears that a patent fraud or other major violation of law is being
15 committed," while also being cautious to avoid "overstep[ping] its authority by
16 interfering unduly in the conduct of elections." *Id.* at 544-45. The court also criticized
17 the allegations made by the Carter-Mondale Committee as addressing future conduct and
18 for being "highly speculative." *Id.* at 543.²

² In the 1984 election cycle, the National Conservative Political Action Committee filed a complaint against Walter Mondale and Geraldine Ferraro, requesting that the Commission withhold certification of public funds to their general election campaign. Similarly, the Republican National Committee and others petitioned to stop the certification of public funds to the general election campaign of Michael Dukakis and Lloyd Bentsen in 1988. In both cases, the Commission denied the requests on the basis that the requests did not satisfy the standards set forth in *In re Carter-Mondale* for denying certification of funds insofar as patent fraud or a major violation of the law could not be detected. The D.C. Circuit affirmed the Commission's decision to deny the RNC's petition to stop certification of payments to Dukakis/Bentsen. *See Boulter v. FEC*, No. 88-1541 (D.C. Cir., August 3, 1988).

1 During the 1992 election cycle, the Commission denied certification to Lyndon
2 LaRouche and considered a petition to deny public funding to the Clinton/Gore '92
3 General Election Committee. The Commission's denial of certification to Mr. LaRouche,
4 which was based on his prior transactions with the Commission and his federal
5 conviction on fraud charges, was overturned by the D.C. Circuit which ruled that the
6 Commission was "not authorized to appraise candidates' good faith, honesty, probity, or
7 general reliability." *LaRouche v. FEC*, 996 F.2d 1263, 1267 (D.C. Cir. 1993). The court
8 noted that "any inquiry into the bonafides of candidates' promises would take the
9 Commission into highly subjective territory that would imperil the assurance of even-
10 handed treatment." *Id.*

11 In the same election cycle, the Commission considered a petition filed by the
12 Republican National Committee ("RNC") against the Clinton/Gore '92 campaign
13 wherein the RNC alleged that the Clinton/Gore campaign impermissibly received funding
14 from the Democratic National Committee through payments for a "town meeting." The
15 Commission rejected the petition since it did not reasonably appear that patent fraud or
16 violations occurred in the subject transaction which would require the withholding of
17 payments. *See In re Carter-Mondale*, 642 F.2d at 544. The Commission noted that the
18 underlying factual issues were in dispute, and that the appropriate forum to address the
19 questions was the enforcement or audit context. Statement of Reasons, *Petition to Deny*
20 *Certification of Matching Funds to Governor Bill Clinton*, approved June 25, 1992.

21 Further applying the standards articulated by the courts, the Commission rejected
22 three requests to suspend or deny public funds in the 1996 presidential election cycle. *See*
23 *Statement of Reasons, Request to Deny Public Funds to H. Ross Perot and Perot '96*,

1 approved October 17, 1996 (the Commission denied the request by Mr. Herb Rosenberg
2 to deny certification of public funds to Mr. Perot's 1996 general election campaign);
3 Statement of Reasons, *Petition to Deny Certification of Matching Funds to the Dole for*
4 *President Committee*, approved August 8, 1996 (the Commission denied the request by
5 the Democratic National Committee to suspend matching payments to the Dole for
6 President Committee); Statement of Reasons, *Petition to Deny Certification of Matching*
7 *Funds to the Clinton/Gore '96 Primary Committee, Inc.*, approved September 12, 1996
8 (the Commission denied the request by the Dole for President Committee to suspend
9 matching payments to the Clinton/Gore '96 Primary Committee).

10 **B. DISCUSSION**

11 The Commission has rejected the New York Delegation's request to deny
12 certification of Patrick J. Buchanan and Ezola Foster for public funding for the 2000
13 general election. The allegations made against Mr. Buchanan and Ms. Foster do not
14 satisfy the substantial burden that must be met to withhold certification of public funds.
15 While not purely ministerial, the Commission's review of public funding applications is
16 limited to determining whether the applications adequately comply with the eligibility
17 requirements set forth in the Fund Act. The Fund Act obligates the Commission to make
18 an initial determination within 10 days of the candidate's meeting all applicable
19 conditions for eligibility. 26 U.S.C. § 9005. Absent patent irregularities suggesting the
20 possibility of fraud, the Commission is precluded from withholding funds from a
21 candidate "once the objective criteria for eligibility are met, because of the important
22 constitutional free speech considerations inherent in public campaign financing." *In re*
23 *Carter-Mondale Reelection Committee, Inc.*, 642 F.2d 538, 544 (D.C. Cir. 1980). To

1 justify withholding funding, the Commission should have a reasonable belief that patent
2 fraud or another major violation has occurred. *See LaRouche*, 996 F.2d at 1267. The
3 Commission should also avoid basing its findings on speculative allegations and should
4 favor a policy that allows for prompt payments of public funds, even if it must forgo a
5 thorough investigation at the initial stage. *CTEL*, 613 F.2d at 841. The Commission does
6 not possess evidence that Mr. Buchanan's application for public funds contains patent
7 irregularities or the possibility of fraud.

8 Moreover, the New York Delegation's allegations primarily relate to the Reform
9 Party's internal rules and procedures. The Fund Act's definition of "candidate" explicitly
10 requires the Commission to rely on the states' determinations of who appears on the
11 general election ballot for each party. *See* 26 U.S.C. § 9002(2)(B); 11 C.F.R.
12 § 9002.2(a)(2). The Commission should not entangle itself in the complexities of party
13 rules or procedures as the Fund Act does not define eligibility in terms of a political
14 party's actions. Thus, the Commission should not substitute its own judgment for that of
15 a state with regard to who should appear on a state ballot as a party nominee. *See*
16 Statement of Reasons, *Request to Deny Funds to H. Ross Perot and Perot '96*, approved
17 October 17, 1996. Similarly, the New York Delegation's submission relates to events of
18 competing factions of the Reform Party and raises questions regarding which faction is
19 the "true" Reform Party. However, the Commission's regulations indicate that a
20 "political party" is an association that nominates or selects an individual for federal office
21 whose name appears on the general election ballot as the candidate for that association.
22 *See* 11 C.F.R. § 9002.15. As Mr. Buchanan and Ms. Foster have submitted
23 documentation demonstrating that they have qualified to appear on numerous general

1 election ballots as Reform Party candidates, they meet the Fund Act's definition of
2 "candidate," and the Reform Party, under whose designation they run, meets the
3 definition of "political party." *See also* Advisory Opinion 1998-2 (The Commission has
4 recognized the Reform Party as a political party).

5 Therefore, consistent with past Commission practice and judicial precedent, the
6 Commission rejects the request by the New York Delegation to withhold certification of
7 public funds to Mr. Buchanan and Ms. Foster.

8 **IV. COMMISSION DETERMINATION**

9 For the foregoing reasons, the Commission has denied the request of the New
10 York Delegation to deny certification of public funds for the 2000 general election to Mr.
11 Patrick J. Buchanan and Ms. Ezola Foster.

12

13 **Attachment**

- 14 1. The New York Delegation's Submission Requesting that the Commission
15 Deny Certification of Public Funds to Patrick Buchanan and Ezola Foster,
16 dated August 28, 2000.

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