acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The Commission has established a two-pronged test enabling domestic subsidiaries of foreign nationals to make political contributions. In order to meet the requirements of this test, an entity associated with a foreign national (either as a domestic subsidiary or as a state political action committee) must demonstrate that it does not receive funds for the contributions from its parent foreign national, and that the parent foreign national does not exercise any control or decision making responsibility regarding the contribution. Additionally, the source of the funds must be examined. Satisfying this first prong requires examining the identity of the decision makers, including the officers and directors of the domestic subsidiary.
The above-named respondent has failed to satisfy this criteria. Consequently, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Arthur K. Goto, Esquire
Iwai, Motooka & Goto
Suite 502, Hasegawa Komuten Building
820 Mililani Street
Honolulu, HI 96813

RE: MUR 2892
Haseko (Hawaii), Inc.

Dear Mr. Goto:

On June 6, 1989, the Federal Election Commission notified Haseko (Hawaii), Inc. of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Haseko (Hawaii), Inc. violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against Haseko (Hawaii), Inc.. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against Haseko (Hawaii), Inc., the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either

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proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

9404357184 2

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: Haseko (Hawaii), Inc.

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Haseko (Hawaii) Inc. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Haseko (Hawaii), Inc. MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

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These matters involve both individuals and corporations who

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Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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The Commission has established a two-pronged test enabling domestic subsidiaries of foreign nationals to make political contributions. In order to meet the requirements of this test, an entity associated with a foreign national (either as a domestic subsidiary or as a state political action committee) must demonstrate that it does not receive funds for the contributions from its parent foreign national, and that the parent foreign national does not exercise any control or decision making responsibility regarding the contribution. Additionally, the source of the funds must be examined. Satisfying this first prong requires examining the identity of the decision makers, including the officers and directors of the domestic subsidiary.
The above-named respondent has failed to satisfy this criteria. Consequently, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Stephen M. Okano
McCorriston, Miho & Miller
1001 Bishop Street
Pacific Tower, Suite 1500
Honolulu, HI 96813

RE: MUR 2892
Daiichiya-Love's Bakery, Inc.

Dear Mr. Okano:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Daiichiya-Love's Bakery, Inc. violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Daiichiya-Love's Bakery, Inc.

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

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For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Daiichiya-Love's Bakery, Inc. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

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10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Daiichiya-Love's Bakery, Inc. MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The Commission has established a two-pronged test enabling domestic subsidiaries of foreign nationals to make political contributions. In order to meet the requirements of this test, an entity associated with a foreign national (either as a domestic subsidiary or as a state political action committee) must demonstrate that it does not receive funds for the contributions from its parent foreign national, and that the parent foreign national does not exercise any control or decision making responsibility regarding the contribution. Additionally, the source of the funds must be examined. Satisfying this first prong requires examining the identity of the decision makers, including the officers and directors of the domestic subsidiary.
The above-named respondent has failed to satisfy this criteria. Consequently, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Sabrina Shizue McKenna, Esquire
Otaka, Inc.
2571 Lemon Road
Honolulu, HI 96815

RE: MUR 2892
Otaka, Inc.

Dear Mr. McKenna:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging iolations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990 found that there is reason to believe Otaka, Inc. violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Otaka, Inc. MUR 2892

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3. Identify all management personnel.

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> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The Commission has established a two-pronged test enabling domestic subsidiaries of foreign nationals to make political contributions. In order to meet the requirements of this test, an entity associated with a foreign national (either as a domestic subsidiary or as a state political action committee) must demonstrate that it does not receive funds for the contributions from its parent foreign national, and that the parent foreign national does not exercise any control or decision making responsibility regarding the contribution. Additionally, the source of the funds must be examined. Satisfying this first prong requires examining the identity of the decision makers, including the officers and directors of the domestic subsidiary.
The above-named respondent has failed to satisfy this criteria. Consequently, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

James J. Stone, Esquire
Fujiyama, Duffy & Fujiyama
Suite 2700, Pauahi Tower, Bishop Square
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 2892
Daiei Hawaii Investments, Inc.

Dear Mr. Stone:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Daiei Hawaii Investments, Inc. violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

9404357189 3

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Daiei Hawaii Investments, Inc.

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Daiei Hawaii Investments, Inc. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Daiei Hawaii Investments, Inc. MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

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As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

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In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

A number of respondents, including the one named above, have failed to allege that they are United States citizens, resident aliens, or domestic subsidiaries of foreign nationals entitled to make contributions. In light of the unrefuted allegations in the complaint that such persons are foreign nationals, there is reason to believe respondent violated 2 U.S.C. § 441e.

9404357190 8

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Russell S. Kato, Esquire
Goodsill, Anderson, Quinn & Stifel
1600 Bancorp Tower
130 Merchant Street
Honolulu, HI 96813

RE: MUR 2892
Grosvenor Intern't (Hawaii)
LTD.

Dear Mr. Kato:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1, 1990, found that there is reason to believe Grosvenor Intern't (Hawaii) LTD. violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: Grosvenor Internation (Hawaii), Ltd.

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Grosvenor International (Hawaii), Ltd. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Grosvenor International (Hawaii), LTD

MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

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In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The Commission has established a two-pronged test enabling domestic subsidiaries of foreign nationals to make political contributions. In order to meet the requirements of this test, an entity associated with a foreign national (either as a domestic subsidiary or as a state political action committee) must demonstrate that it does not receive funds for the contributions from its parent foreign national, and that the parent foreign national does not exercise any control or decision making responsibility regarding the contribution. Additionally, the source of the funds must be examined. Satisfying this first prong requires examining the identity of the decision makers, including the officers and directors of the domestic subsidiary. The above-named respondent has failed to satisfy this criteria. Consequently, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Tobishima Pacific, Inc.
Pacific Tower, Suite 1140
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 2892
Tobishima Pacific, Inc.

Dear Sir:

On June 6, 1989, the Federal Election Commission notified Tobishima Pacific, Inc. of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Tobishima Pacific, Inc. violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against Tobishima Pacific, Inc.. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against Tobishima Pacific, Inc., the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either

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proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Designation of Counsel Form
Factual & Legal Analysis

9404357192 7

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: Tobishima Pacific, Inc.

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Tobishima Pacific, Inc. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Tobishima Pacific, Inc. MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

As discussed above, in its advisory opinions the Commission has applied a two pronged test to determine whether a domestic subsidiary of a foreign national may contribute to state and local elections. In general, such contributions are permissible provided that the foreign national parent is not the source of funds and persons participating in the decision-making process regarding such contributions are not foreign nationals. The above-named respondent appears to be such domestic subsidiary, yet has not satisfied the Commission's two-pronged test. Therefore, there is reason to believe respondent violated section 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Clinton K.L. Ching, Esquire
Damon, Key, Bocken, Leong & Kupchak
1600 Pauahi Tower
1001 Bishop Street
Honlulu, HI 96813

RE: MUR 2892
Leyton House (Hawaii) Inc.

Dear Mr. Ching:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Leyton House (Hawaii) Inc. violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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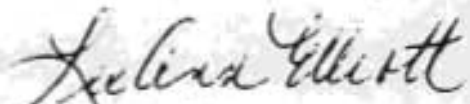
If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,



Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: Leyton House (Hawaii), Inc.

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

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The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Leyton House (Hawaii), Inc. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Leyton House (Hawaii), Inc. MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

As discussed above, in its advisory opinions the Commission has applied a two pronged test to determine whether a domestic subsidiary of a foreign national may contribute to state and local elections. In general, such contributions are permissible provided that the foreign national parent is not the source of funds and persons participating in the decision-making process regarding such contributions are not foreign nationals. The above-named respondent appears to be such domestic subsidiary, yet has not satisfied the Commission's two-pronged test. Therefore, there is reason to believe respondent violated section 441e.

9404357195 9

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

John Phelps Clark, Counsel
Box 697, Saab Drive
Orange, CT 06477

RE: MUR 2892
Saab-Scania of America, Inc.

Dear Mr. Clark:

On June 6, 1989, the Federal Election Commission notified Saab-Scania of America, Inc. of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Saab-Scania of America, Inc. violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against Saab-Scania of America, Inc.. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against Saab-Scania of America, Inc., the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either

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proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

9404357196 1

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Saab-Scania of America, Inc.

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

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Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Saab-Scania of America, Inc. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

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The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Saab-Scania of America, Inc. MUR: 2892

I. BACKGROUND

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II. LEGAL ANALYSIS

A. THE LAW

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Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

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> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

As discussed above, in its advisory opinions the Commission has applied a two pronged test to determine whether a domestic subsidiary of a foreign national may contribute to state and local elections. In general, such contributions are permissible provided that the foreign national parent is not the source of funds and persons participating in the decision-making process regarding such contributions are not foreign nationals. The above-named respondent appears to be such domestic subsidiary, yet has not satisfied the Commission's two-pronged test. Therefore, there is reason to believe respondent violated section 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Russell S. Kato, Esquire
Goodsill, Anderson, Quinn & Stifel
1600 Bancorp Tower
130 Merchant Street
Honolulu, HI 96813

RE: MUR 2892
Pacifico Creative Services, Inc.

Dear Mr. Kato:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Pacifico Creative Services, Inc. violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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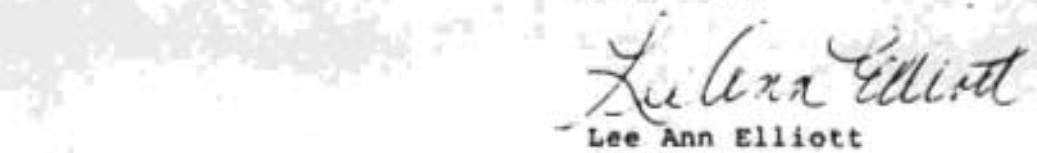
If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,



Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Pacifico Creative Services, Inc.

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Pacifico Creative Services, Inc. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Pacifico Creative Services, Inc. MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

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As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

As discussed above, in its advisory opinions the Commission has applied a two pronged test to determine whether a domestic subsidiary of a foreign national may contribute to state and local elections. In general, such contributions are permissible provided that the foreign national parent is not the source of funds and persons participating in the decision-making process regarding such contributions are not foreign nationals. The above-named respondent appears to be such domestic subsidiary, yet has not satisfied the Commission's two-pronged test. Therefore, there is reason to believe respondent violated section 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Russell S. Kato, Esquire
Goodsill Anderson, Quinn & Stifel
1600 Bancorp Tower
130 Merchant Street
Honolulu, HI 96813

RE: MUR 2846
Japan Air Lines Company, LTD.

Dear Mr. Kato:

On April 17, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Japan Air Lines Company, LTD. violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee-Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: Japan Air Lines Company, Inc.

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Japan Air Lines Co., Inc. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Japan Air Lines Company, LTD. MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its [illegible] to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different par[illegible] are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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III. FACTUAL AND LEGAL ANALYSIS

A number of respondents, including the one named above, have failed to allege that they are United States citizens, resident aliens, or domestic subsidiaries of foreign nationals entitled to make contributions. In light of the unrefuted allegations in the complaint that such persons are foreign nationals, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Michael K. Tanigawa, Esquire
Tanigawa & Tanigawa
Suite 1550, Pacific Tower
1001 Bishop Street
Honolulu, HI 96813

RE: MURs 2846 and 2892
Japan Travel Bureau Int., Inc.

Dear Mr. Tanigawa:

On April 17, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Japan Travel Bureau Int., Inc. violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Japan Travel Bureau International, Inc.

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

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For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Japan Travel Bureau International, Inc. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Japan Travel Bureau International, Inc. MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

As discussed above, in its advisory opinions the Commission has applied a two pronged test to determine whether a domestic subsidiary of a foreign national may contribute to state and local elections. In general, such contributions are permissible provided that the foreign national parent is not the source of funds and persons participating in the decision-making process regarding such contributions are not foreign nationals. The above-named respondent appears to be such domestic subsidiary, yet has not satisfied the Commission's two-pronged test. Therefore, there is reason to believe respondent violated section 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Karl K. Kobayashi, Esquire
Carlsmith, Wichman, Case, Mukai & Ichiki
Suite 2200, Pacific Tower
1001 Bishop Street
Honolulu, HI 96813

RE: MURs 2846 and 2892
Pan-Pacific Construction, Inc.

Dear Mr. Kobayashi:

On April 17, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Pan-Pacific Construction, Inc. violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
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"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Pan-Pacific Construction Co., Inc. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Pan-Pacific Construction, Inc. MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The Commission has established a two-pronged test enabling domestic subsidiaries of foreign nationals to make political contributions. In order to meet the requirements of this test, an entity associated with a foreign national (either as a domestic subsidiary or as a state political action committee) must demonstrate that it does not receive funds for the contributions from its parent foreign national, and that the parent foreign national does not exercise any control or decision making responsibility regarding the contribution. Additionally, the source of the funds must be examined. Satisfying this first prong requires examining the identity of the decision makers, including the officers and directors of the domestic subsidiary.
The above-named respondent has failed to satisfy this criteria. Consequently, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Dickson C.H. Lee, Esquire
Okumura, Takushi, Funaki & Wee
Suite 1400, Grosvenor Center
733 Bishop Street
Honolulu, HI 96813

RE: MUR 2892
Matsuzato Hawaii, Inc.

Dear Mr. Lee:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Matsuzato Hawaii, Inc. violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Matsuzato Hawaii, Inc. (dba as Queen Kapiolani Hotel)

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Matsuzato Hawaii, Inc. (dba as Queen Kapiolani Hotel) MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

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10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Matsuzato Hawaii, Inc. (dba as Queen Kapiolani Hotel) MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

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> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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> (1) a government of a foreign country and a foreign political party;
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> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

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In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. TENTH AMENDMENT CONCERNS

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive—i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The Commission has established a two-pronged test enabling domestic subsidiaries of foreign nationals to make political contributions. In order to meet the requirements of this test, an entity associated with a foreign national (either as a domestic subsidiary or as a state political action committee) must demonstrate that it does not receive funds for the contributions from its parent foreign national, and that the parent foreign national does not exercise any control or decision making responsibility regarding the contribution. Additionally, the source of the funds must be examined. Satisfying this first prong requires examining the identity of the decision makers, including the officers and directors of the domestic subsidiary.
The above-named respondent has failed to satisfy this criteria. Consequently, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Lawrence S. Okinaga and
Stanley D. Suyat, Esquire
Carlsmith, Wichman, Case, Mukai & Ichiki
Suite 2200, Pacific Tower
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 2846
Kumagai Properties, Inc.

Dear Messrs. Okinaga and Suyat:

On April 17, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Kumagai Properties, Inc. violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Kumagai Properties, Inc.

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Kumagai Properties, Inc. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Kumagai Properties, Inc. MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

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U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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2. TENTH AMENDMENT CONCERNS

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The Commission has established a two-pronged test enabling domestic subsidiaries of foreign nationals to make political contributions. In order to meet the requirements of this test, an entity associated with a foreign national (either as a domestic subsidiary or as a state political action committee) must demonstrate that it does not receive funds for the contributions from its parent foreign national, and that the parent foreign national does not exercise any control or decision making responsibility regarding the contribution. Additionally, the source of the funds must be examined. Satisfying this first prong requires examining the identity of the decision makers, including the officers and directors of the domestic subsidiary.
The above-named respondent has failed to satisfy this criteria. Consequently, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

David W. Kahanu Campaign Committee
530 South Ting Street, Room 202
Honolulu, HI 96813

RE: MUR 2846
David W. Kahanu Campaign
Committee

Dear Mr. Kahanu:

On April 17, 1989, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1, 1990, found that there is reason to believe David W. Kahanu Campaign Committee violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis
Designation of Counsel Form

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Committee of Honolulu City Councilman David W. Kahanu

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES

TO: Committee of Honolulu City Councilman David W. Kahanu

1. Regarding the complaint or complaints you received in the above captioned matter, state whether you have received any contributions from the alleged foreign nationals noted in the complaint. If so, for each, list the name of the contributor, amount, date, and whether or not such contribution has been refunded.

2. List all other contributions received from foreign nationals, and for each, list the name of the contributor, amount, date, and whether or not such contribution has been refunded.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Committee of Honolulu City Councilman David W. Kahanu

MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA").

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

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These matters involve both individuals and corporations who

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Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

A number of candidate committees are also alleged to have violated section 441e by accepting contributions from foreign nationals, including Honolulu City Councilman David W. Kahanu who admits accepting a contribution from Royal Hawaiian Country Club. Additionally, he admits that upon a review of materials, he also accepted a contribution from American Hawaiian Cruises.[1] Therefore, there is reason to believe respondent violated 2 U.S.C. § 441e.

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1. Both these contributions were to be refunded.

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Herbert T. Ikazaki, Esquire
Ikazaki, Devens, Lo, Youth & Nakano
Suite 1600, Central Pacific Plaza
220 South King Street
Honolulu, HI 96813

RE: MUR 2892
ANA Hallo Tours (USA), Inc.

Dear Mr. Ikazaki:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1, 1990, found that there is reason to believe ANA Hallo Tours (USA), Inc. violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: ANA Hallo Tours (USA), Inc.

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: ANA Hallo Tours (USA), Inc. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

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10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: ANA Hallo Tours (USA), Inc. MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

As discussed above, in its advisory opinions the Commission has applied a two pronged test to determine whether a domestic subsidiary of a foreign national may contribute to state and local elections. In general, such contributions are permissible provided that the foreign national parent is not the source of funds and persons participating in the decision-making process regarding such contributions are not foreign nationals. The above-named respondent appears to be such domestic subsidiary, yet has not satisfied the Commission's two-pronged test. Therefore, there is reason to believe respondent violated section 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Larry T. Takumi, Esquire
Cades, Schutte, Fleming & Wright
1000 Bishop Street
Honolulu, HI 96813

RE: MUR 2892
ANA Hotels Hawaii, Inc.

Dear Mr. Takumi:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1, 1990, found that there is reason to believe ANA Hotels Hawaii, Inc. violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: ANA Hotels Hawaii, Inc.

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: ANA Hotels Hawaii, Inc. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: ANA Hotels Hawaii, Inc. MUR: 2892

I. BACKGROUND

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> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) [overruling National League of Cities v. Usery, 426 U.S. 833 (1976)]. Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The Commission has established a two-pronged test enabling domestic subsidiaries of foreign nationals to make political contributions. In order to meet the requirements of this test, an entity associated with a foreign national (either as a domestic subsidiary or as a state political action committee) must demonstrate that it does not receive funds for the contributions from its parent foreign national, and that the parent foreign national does not exercise any control or decision making responsibility regarding the contribution. Additionally, the source of the funds must be examined. Satisfying this first prong requires examining the identity of the decision makers, including the officers and directors of the domestic subsidiary.

The above-named respondent has failed to satisfy this criteria. Consequently, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Cheryl K. Kakazu, Esquire
Kobayahi, Watanabe, Sugita, Kawashima & Goda
Hawaii Tower, 8th Floor
745 Fort Street
Honolulu, HI 96813-3889

RE: MUR 2846
Mauna Lani Resort, Inc.

Dear Ms. Kakazu:

On April 17, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Mauna Lani Resort, Inc. violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Mauna Lani Resort, Inc.

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Mauna Lani Resort, Inc. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Mauna Lani Resort Inc. MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

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In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. TENTH AMENDMENT CONCERNS

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The Commission has established a two-pronged test enabling domestic subsidiaries of foreign nationals to make political contributions. In order to meet the requirements of this test, an entity associated with a foreign national (either as a domestic subsidiary or as a state political action committee) must demonstrate that it does not receive funds for the contributions from its parent foreign national, and that the parent foreign national does not exercise any control or decision making responsibility regarding the contribution. Additionally, the source of the funds must be examined. Satisfying this first prong requires examining the identity of the decision makers, including the officers and directors of the domestic subsidiary.

The above-named respondent has failed to satisfy this criteria. Consequently, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Kevin S.C. Chang, Esquire
Kobayahi, Watanabe, Sugita, Kawashima & Goda
Hawaii Tower, 8th Floor
745 Fort Street
Honolulu, HI 96813-3889

RE: MURs 2846 and 2892
Ohbayashi Hawaii Corp.

Dear Mr. Chang:

On April 17, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Ohbayashi Hawaii Corp. violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Ohbayashi Hawaii Corporation

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Obayashi Hawaii Corporation MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Ohbayashi Hawaii Corporation MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA").

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

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In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The Commission has established a two-pronged test enabling domestic subsidiaries of foreign nationals to make political contributions. In order to meet the requirements of this test, an entity associated with a foreign national (either as a domestic subsidiary or as a state political action committee) must demonstrate that it does not receive funds for the contributions from its parent foreign national, and that the parent foreign national does not exercise any control or decision making responsibility regarding the contribution. Additionally, the source of the funds must be examined. Satisfying this first prong requires examining the identity of the decision makers, including the officers and directors of the domestic subsidiary. The above-named respondent has failed to satisfy this criteria. Consequently, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Herbert T. Ikazaki, Esquire
Ikazaki, Devens, Lo, Youth & Nakano
Suite 1600, Central Pacific Plaza
220 South King Street
Honolulu, HI 96813

RE: MUR 2892
All Nippon Airways Co., LTD.

Dear Mr. Ikazaki:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1, 1990, found that there is reason to believe All Nippon Airways Co., LTD. violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: All Nippon Airways Co., Ltd.

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: All Nippon Airways Co., Ltd. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: All Nippon Airways Co., LTD. MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

A number of respondents, including the one named above, have failed to allege that they are United States citizens, resident aliens, or domestic subsidiaries of foreign nationals entitled to make contributions. In light of the unrefuted allegations in the complaint that such persons are foreign nationals, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Morio Omori
Pacific Tower, Suite 1030
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 2892
Halekulani Corp.

Dear Mr. Omori:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Halekulani Corp. violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Halekulani Corporation

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Halekulani Corporation MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Halekulani Corporation MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. TENTH AMENDMENT CONCERNS

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The Commission has established a two-pronged test enabling domestic subsidiaries of foreign nationals to make political contributions. In order to meet the requirements of this test, an entity associated with a foreign national (either as a domestic subsidiary or as a state political action committee) must demonstrate that it does not receive funds for the contributions from its parent foreign national, and that the parent foreign national does not exercise any control or decision making responsibility regarding the contribution. Additionally, the source of the funds must be examined. Satisfying this first prong requires examining the identity of the decision makers, including the officers and directors of the domestic subsidiary.

The above-named respondent has failed to satisfy this criteria. Consequently, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Cheryl K. Kakazu, Esquire
Kobayahi, Watanabe, Sugita, Kawashima & Goda
Hawaii Tower, 8th Floor
745 Fort Street
Honolulu, HI 96813-3889

RE: MUR 2846
Mauna Lani Resort PAC

Dear Ms. Kakazu:

On April 17, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Mauna Lani Resort PAC violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: Mauna Lani Resort PAC

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

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"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Mauna Lani Resort PAC MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

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The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Mauna Lani Resort PAC MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

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52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The Commission has established a two-pronged test enabling domestic subsidiaries of foreign nationals to make political contributions. In order to meet the requirements of this test, an entity associated with a foreign national (either as a domestic subsidiary or as a state political action committee) must demonstrate that it does not receive funds for the contributions from its parent foreign national, and that the parent foreign national does not exercise any control or decision making responsibility regarding the contribution. Additionally, the source of the funds must be examined. Satisfying this first prong requires examining the identity of the decision makers, including the officers and directors of the domestic subsidiary.
The above-named respondent has failed to satisfy this criteria. Consequently, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Citizens for Waihee
800 South Beretania
Suite 24A
Honolulu, Hawaii 96801

RE: MURs 2846 and 2892
Citizens for Waihee

Dear Sir:

On April 17, 1989, the Federal Election Commission notified your committee of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1, 1990, found that there is reason to believe Citizens for Waihee violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis
Designation of Counsel Form

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: Citizens for Waihee

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES

TO: Citizens for Waihee

1. Regarding the complaint or complaints you received in the above captioned matter, state whether you have received any contributions from the alleged foreign nationals noted in the complaint. If so, for each, list the name of the contributor, amount, date, and whether or not such contribution has been refunded.

2. List all other contributions received from foreign nationals, and for each, list the name of the contributor, amount, date, and whether or not such contribution has been refunded.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Citizens for Waihee MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

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U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The campaign of Citizens for Waihee did not submit a substanative response in this matter. In light of the unrefuted allegations in the complaint that respondent accepted contributions from foreign nationals, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Benjamin J. Cayetano Campaign Committee
Lt. Governor
P.O. Box 3226
Honolulu, Hawaii 96801

RE: MUR 2846
Benjamin J. Cayetano Campaign Committee

Dear Mr. Cayetano:

On April 17, 1989, the Federal Election Commission notified your committee of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Benjamin J. Cayetano Campaign Committee violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis
Designation of Counsel Form

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Committee of Lieutenant Governor Ben Cayetano

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES

TO: Committee of Lieutent Governor Ben Cayetano

1. Regarding the complaint or complaints you received in the above captioned matter, state whether you have received any contributions from the alleged foreign nationals noted in the complaint. If so, for each, list the name of the contributor, amount, date, and whether or not such contribution has been refunded.

2. List all other contributions received from foreign nationals, and for each, list the name of the contributor, amount, date, and whether or not such contribution has been refunded.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Committee of Lieutenant Governor Ben Cayetano

MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

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In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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These matters involve both individuals and corporations who

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Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

Lieutenant Governor Ben Cayetano notes that he received a total of $8,000 from four persons who were subsequently determined to be foreign nationals. Therefore, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Jason G.F. Wong, Esquire
900 Fort Street Mall
Suite 270 Pioneer Plaza
Honolulu, HI 96813

RE: MUR 2892
New Tokyo-Hawaii Restaurant
Co., LTD.

Dear Mr. Wong:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging iolations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990 found that there is reason to believe New Tokyo-Hawaii Restaurant Co., LTD. violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: New Tokyo-Hawaii Restaurant Co., LTD.

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: New Tokyo-Hawaii Restaurant Co., LTD. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: New Tokyo-Hawaii Restaurant Co., LTD. MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The Commission has established a two-pronged test enabling domestic subsidiaries of foreign nationals to make political contributions. In order to meet the requirements of this test, an entity associated with a foreign national (either as a domestic subsidiary or as a state political action committee) must demonstrate that it does not receive funds for the contributions from its parent foreign national, and that the parent foreign national does not exercise any control or decision making responsibility regarding the contribution. Additionally, the source of the funds must be examined. Satisfying this first prong requires examining the identity of the decision makers, including the officers and directors of the domestic subsidiary.
The above-named respondent has failed to satisfy this criteria. Consequently, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Karl K. Kobayashi, Esquire
Carlsmith, Wichman, Case, Mukai & Ichiki
Suite 2200, Pacific Tower
1001 Bishop Street
Honolulu, HI 96813

RE: MURs 2846 and 2892
Pan-Pacific Development, Inc.

Dear Mr. Kobayashi:

On April 17, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Pan-Pacific Development, Inc. violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Pan-Pacific Development, Inc.

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Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Pan-Pacific Development, Inc. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Pan-Pacific Development Inc. MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The Commission has established a two-pronged test enabling domestic subsidiaries of foreign nationals to make political contributions. In order to meet the requirements of this test, an entity associated with a foreign national (either as a domestic subsidiary or as a state political action committee) must demonstrate that it does not receive funds for the contributions from its parent foreign national, and that the parent foreign national does not exercise any control or decision making responsibility regarding the contribution. Additionally, the source of the funds must be examined. Satisfying this first prong requires examining the identity of the decision makers, including the officers and directors of the domestic subsidiary.
The above-named respondent has failed to satisfy this criteria. Consequently, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Raymond S. Iwamoto, Esquire
Goodsill, Anderson, Quinn & Stifel
1600 Bancorp Tower
130 Merchant Street
Honolulu, HI 96813

RE: MUR 2892
Azabu USA Corporation

Dear Mr. Iwamoto:

On June 6, 1989, the Federal Election Commission notified Azabu USA Corporation of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Azabu USA Corporation violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against Azabu USA Corporation. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against Azabu USA Corporation, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either

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proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Azabu USA Corporation

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Azabu USA Corp. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Azabu USA Corporation MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

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In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

As discussed above, in its advisory opinions the Commission has applied a two pronged test to determine whether a domestic subsidiary of a foreign national may contribute to state and local elections. In general, such contributions are permissible provided that the foreign national parent is not the source of funds and persons participating in the decision-making process regarding such contributions are not foreign nationals. The above-named respondent appears to be such domestic subsidiary, yet has not satisfied the Commission's two-pronged test. Therefore, there is reason to believe respondent violated section 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Herbert T. Ikazaki, Esquire
Ikazaki, Devens, LO, Youth & Nakano
Suite 1600 Central Pacific Plaza
220 South King Street
Honolulu, HI 96813

RE: MUR 2892
Kintetsu International Express

Dear Mr. Ikazaki:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Kintetsu International Express violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Kintetsu International Express

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Kintetsu International Express MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Kintetsu International Express MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

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In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

As discussed above, in its advisory opinions the Commission has applied a two pronged test to determine whether a domestic subsidiary of a foreign national may contribute to state and local elections. In general, such contributions are permissible provided that the foreign national parent is not the source of funds and persons participating in the decision-making process regarding such contributions are not foreign nationals. The above-named respondent appears to be such domestic subsidiary, yet has not satisfied the Commission's two-pronged test. Therefore, there is reason to believe respondent violated section 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Raymond S. Iwamoto, Esquire
Goodsill, Anderson, Quinn & Stifel
1600 Bancorp Tower
130 Merchant Street
Honolulu, HI 96813

RE: MUR 2892
Azabu Realty, Inc.

Dear Mr. Iwamoto:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Azabu Realty, Inc. violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: Azabu Realty, Inc.

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Azabu Realty, Inc. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Azabu Realty, Inc. MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used [illegible] parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

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These matters involve both individuals and corporations who

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Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The Commission has established a two-pronged test enabling domestic subsidiaries of foreign nationals to make political contributions. In order to meet the requirements of this test, an entity associated with a foreign national (either as a domestic subsidiary or as a state political action committee) must demonstrate that it does not receive funds for the contributions from its parent foreign national, and that the parent foreign national does not exercise any control or decision making responsibility regarding the contribution. Additionally, the source of the funds must be examined. Satisfying this first prong requires examining the identity of the decision makers, including the officers and directors of the domestic subsidiary.

The above-named respondent has failed to satisfy this criteria. Consequently, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Sam D. Delich, Esquire
Graham & James
One Maritime Plaza, Suite 300
Third Floor
San Francisco, CA 94111

RE: MURs 2846 and 2892
American Hawaii Cruises

Dear Mr. Delich:

On April 17, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe American Hawaii Cruises violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: American Hawaii Cruises

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

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"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: American Hawaii Cruises MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: American Hawaii Cruises MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA").

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The Commission has established a two-pronged test enabling domestic subsidiaries of foreign nationals to make political contributions. In order to meet the requirements of this test, an entity associated with a foreign national (either as a domestic subsidiary or as a state political action committee) must demonstrate that it does not receive funds for the contributions from its parent foreign national, and that the parent foreign national does not exercise any control or decision making responsibility regarding the contribution. Additionally, the source of the funds must be examined. Satisfying this first prong requires examining the identity of the decision makers, including the officers and directors of the domestic subsidiary.

The above-named respondent has failed to satisfy this criteria. Consequently, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Karl K. Kobayashi, Esquire
Carlsmith, Wichman, Case, Mukai & Ichiki
Suite 2200, Pacific Tower
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 2846
Hawaii Omori Corporation

Dear Mr. Kobayashi:

On April 17, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Hawaii Omori Corporation violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Hawaii Omori Corporation MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

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FEDERAL ELECTION COMMISSION

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A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used [illegible] parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. TENTH AMENDMENT CONCERNS

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The Commission has established a two-pronged test enabling domestic subsidiaries of foreign nationals to make political contributions. In order to meet the requirements of this test, an entity associated with a foreign national (either as a domestic subsidiary or as a state political action committee) must demonstrate that it does not receive funds for the contributions from its parent foreign national, and that the parent foreign national does not exercise any control or decision making responsibility regarding the contribution. Additionally, the source of the funds must be examined. Satisfying this first prong requires examining the identity of the decision makers, including the officers and directors of the domestic subsidiary. The above-named respondent has failed to satisfy this criteria. Consequently, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Karl K. Kobayashi, Esquire
Carlsmith, Wichman, Case, Mukai & Ichiki
Suite 2200, Pacific Tower
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 2892
Nitto Hawaii Co., Inc.

Dear Mr. Kobayashi:

On June 6, 1989, the Federal Election Commission notified Nitto Hawaii Co., Inc. of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Nitto Hawaii Co., Inc. violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against Nitto Hawaii Co., Inc.. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against Nitto Hawaii Co., Inc., the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either

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proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: Nitto Hawaii Company, Inc.

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Nitto Hawaii Co., Inc. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Nitto Hawaii Co., Inc. MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

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sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The Commission has established a two-pronged test enabling domestic subsidiaries of foreign nationals to make political contributions. In order to meet the requirements of this test, an entity associated with a foreign national (either as a domestic subsidiary or as a state political action committee) must demonstrate that it does not receive funds for the contributions from its parent foreign national, and that the parent foreign national does not exercise any control or decision making responsibility regarding the contribution. Additionally, the source of the funds must be examined. Satisfying this first prong requires examining the identity of the decision makers, including the officers and directors of the domestic subsidiary.
The above-named respondent has failed to satisfy this criteria. Consequently, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Thomas J. Wong, Esquire
Ikazaki, Devens, LO, Youth & Nakano
Suite 1600, Central Pacific Plaza
220 South King Street
Honolulu, HI 96813

RE: MUR 2892
Longevity Intn'l Enterprises

Dear Mr. Wong:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Longevity Intn'l Enterprises violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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u should so request in writing. See 11 C.F.R.
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in agreement in settlement of the matter or recommending
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briefs on probable cause have been mailed to the respondent.

equests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Longevity International Enterprises Corporation

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Longevity International Enterprises Corporation MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Longevity International Enterprises Corporation MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

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In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

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Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

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C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

As discussed above, in its advisory opinions the Commission has applied a two pronged test to determine whether a domestic subsidiary of a foreign national may contribute to state and local elections. In general, such contributions are permissible provided that the foreign national parent is not the source of funds and persons participating in the decision-making process regarding such contributions are not foreign nationals. The above-named respondent appears to be such domestic subsidiary, yet has not satisfied the Commission's two-pronged test. Therefore, there is reason to believe respondent violated section 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

May 21, 1990

Campaign of Senator James Aki
State Capitol, Room 231
Honolulu, Hawaii 96813

RE: MUR 2846
Campaign of Senator James Aki

Dear Mr. Aki:

On April 17, 1989, the Federal Election Commission notified your committee of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Campaign of Senator James Aki violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis
Designation of Counsel Form

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Campaign of James Aki

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES

TO: Committee of James Aki

1. Regarding the complaint or complaints you received in the above captioned matter, state whether you have received any contributions from the alleged foreign nationals noted in the complaint. If so, for each, list the name of the contributor, amount, date, and whether or not such contribution has been refunded.

2. List all other contributions received from foreign nationals, and for each, list the name of the contributor, amount, date, and whether or not such contribution has been refunded.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Campaign of James Aki MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

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Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The campaign of James Aki did not submit a response in this matter. In light of the unrefuted allegations in the complaint that respondent accepted contributions from foreign nationals, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Campaign of Leigh-Wai Doo
1188 Bishop Street, Suite 1203
Honolulu, Hawaii 96813

RE: MUR 2892
Campaign of Leigh-Wai Doo

Dear Sir:

On June 6, 1989, the Federal Election Commission notified Campaign of Leigh-Wai Doo of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Campaign of Leigh-Wai Doo violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against Campaign of Leigh-Wai Doo. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against Campaign of Leigh-Wai Doo, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either

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proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott
Chairman

Enclosures
Questions
Designation of Counsel Form
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: Campaign of Leigh-Wai Doo

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES

TO: Campaign of Leigh-Wai Doo

1. Regarding the complaint or complaints you received in the above captioned matter, state whether you have received any contributions from the alleged foreign nationals noted in the complaint. If so, for each, list the name of the contributor, amount, date, and whether or not such contribution has been refunded.

2. List all other contributions received from foreign nationals, and for each, list the name of the contributor, amount, date, and whether or not such contribution has been refunded.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Campaign of Leigh-Wai Doo MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The campaign of Leigh-Wai Doo also submitted a response, stating that only two persons were alleged to have impermissibly contributed and that neither such person is a foreign national. This Office disagrees regarding one individual, Yoshinori Hayashida, and no information has been submitted regarding the other respondent, Masanori Kobayashi. Consequently, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Neil Hulbert, Esquire
Hong, Iwai and Hulbert
Suite 2200, Pauahi Tower
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 2892
Mokuleia Land Company

Dear Mr. Hulbert:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Mokuleia Land Company violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Mokuleia Land Company

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

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Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

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The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

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"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Mokuleia Land Company MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Mokuleia Land Company MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. TENTH AMENDMENT CONCERNS

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

A number of respondents, including the one named above, have failed to allege that they are United States citizens, resident aliens, or domestic subsidiaries of foreign nationals entitled to make contributions. In light of the unrefuted allegations in the complaint that such persons are foreign nationals, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Neil F. Hulbert, Esquire
Hong, Iwai and Hulbert
1001 Bishop Street
Honolulu, HI 96813

RE: MURs 2846 and 2892
Yoshinori "Ken" Hayashida

Dear Mr. Hulbert:

On April 17, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is no reason to believe Yoshinori "Ken" Hayashida violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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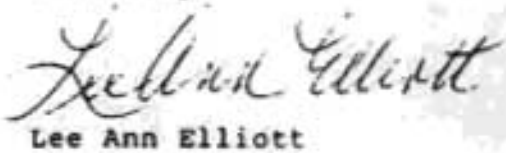
If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,



Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: Yoshinori "Ken" Hayashida

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

To: Yoshinori "Ken" Hayashida

1. State your name, address (home and business), telephone number (home and business) and occupation.

2. Your response in MUR 2846 stated that the funds contributed by you were "funds over which [you] had direct control and the right to use for [your] own personal purposes." Identify the source of these funds, including but not limited to, their location, the account they are in, the account number, and where the funds originated.

3. Identify all persons with access to this account.

4. List all contributions (date, amount, recipient) made by you from this account to federal, state and local elections.

5. List all persons who participated in the decision to make each contribution noted above.

The Commission requests the following documents: a copy of your green card, copies of all checks or receipts for contributions you were required to list in response to interrogatory 4.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Yoshinori "Ken" Hayashida MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

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In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. TENTH AMENDMENT CONCERNS

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

An ambiguity is presented regarding the response of Yoshinori "Ken" Hayashida. The complaint alleged Mr. Hayashida made contributions with the assets of foreign nationals. See MUR 2846 Complaint at pp. 3-4 and 56-57. The response asserts that the funds contributed by this respondent were "funds over which he had direct control and the right to use for his own personal purposes." Because the respondent has failed to address whether a foreign national was the source of these funds, and because his response implies that the funds may be other than strictly personal (i.e. possibly from a corporate expense account), there is reason to believe this individual violated section 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Mervyn M. Kotake, Esquire
Matsubara, Lee & Kotake
Charles R. Kendall Building
888 Mililani Street, Eighth Floor
Honolulu, HI 96813

RE: MURs 2846 and 2892
Hiroshi Kobayashi

Dear Mr. Kotake:

On April 17, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Hiroshi Kobayashi violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Hiroshi Kobayashi

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Hiroshi Kobayashi MUR 2892

1. State your name, address (home and business), telephone number (home and business) and occupation.

2. State your nationality.

3. Are you a resident alien of the United States? If so, provide your INS folder number.

4. If you are not a United States citizen or a permanent resident alien of the United States, list all contributions (date, amount, recipient) made by you to federal, state and local elections.

5. List all persons who participated in the decision to make each contribution noted above.

6. If the contributions noted above were made from funds other than your own, state the source of funds used to make these contributions.

The Commission requests the following documents: a copy of your green card if you answered question 3 in the affirmative, copies of all checks or receipts for contributions you were required to list in response to interrogatory 4.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Hiroshi Kobayashi MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

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III. FACTUAL AND LEGAL ANALYSIS

A number of respondents, including the one named above, have failed to allege that they are United States citizens, resident aliens, or domestic subsidiaries of foreign nationals entitled to make contributions. In light of the unrefuted allegations in the complaint that such persons are foreign nationals, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Chad K. Taniguchi, Esquire
Paul, Johnston, Alston & Hunt
Suite 1300, Pacific Tower
1001 Bishop Street
Honolulu, HI 96812-4438

RE: MURs 2846 and 2892
Tetsuo Yasuda, aka Han Soo Chun

Dear Mr. Taniguchi:

On April 17, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Tetsuo Yasuda, aka Han Soo Chun violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Tetsuo Yasuda (a.k.a. Han Soo Chun)

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto. the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Tetsuo Yasuda (a.k.a. Han Soo Chun) MUR 2892

1. State your name, address (home and business), telephone number (home and business) and occupation.

2. State your nationality.

3. Are you a resident alien of the United States? If so, provide your INS folder number.

4. If you are not a United States citizen or a permanent resident alien of the United States, list all contributions (date, amount, recipient) made by you to federal, state and local elections.

5. List all persons who participated in the decision to make each contribution noted above.

6. If the contributions noted above were made from funds other than your own, state the source of funds used to make these contributions.

The Commission requests the following documents: a copy of your green card if you answered question 3 in the affirmative, copies of all checks or receipts for contributions you were required to list in response to interrogatory 4.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Tetsuo Yasuda (a.k.a. Han Soo Chun) MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

A number of respondents, including the one named above, have failed to allege that they are United States citizens, resident aliens, or domestic subsidiaries of foreign nationals entitled to make contributions. In light of the unrefuted allegations in the complaint that such persons are foreign nationals, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Ann H. Kobayashi Campaign Committee
3657 Waaloa Way
Honolulu, Hawaii 96822

RE: MUR 2846
Ann H. Kobayashi Campaign
Committee

Dear Ms. Kobayashi:

On April 17, 1989, the Federal Election Commission notified your committee of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Ann H. Kobayashi Campaign Committee violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis
Designation of Counsel Form

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Committee of State Senator Ann Kobayashi

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

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INTERROGATORIES

TO: Committee of State Senator Ann Kobayashi

1. Regarding the complaint or complaints you received in the above captioned matter, state whether you have received any contributions from the alleged foreign nationals noted in the complaint. If so, for each, list the name of the contributor, amount, date, and whether or not such contribution has been refunded.

2. List all other contributions received from foreign nationals, and for each, list the name of the contributor, amount, date, and whether or not such contribution has been refunded.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Committee of State Senator Ann Kobayashi

MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

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> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

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> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used [illegible] parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

A number of candidate committees are also alleged to have violated section 441e by accepting contributions from foreign nationals, including State Senator Ann Kobayashi who accepted a contribution from Royal Hawaiian Country Club.[1] Therefore, there is reason to believe respondent violated 2 U.S.C. § 441e.

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1. Her response indicates that this contribution was returned.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Coordination Council for
North American Affairs
2746 Pali Highway
Honolulu, HI 96817

RE: MUR 2892
Coordination Council for North American Affairs

Dear Sir:

On June 6, 1989, the Federal Election Commission notified Coordination Council for North American Affairs of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Coordination Council for North American Affairs violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against Coordination Council for North American Affairs. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against Coordination Council for North American Affairs, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either

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proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Designation of Counsel Form
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Coordination Council For North American Affairs

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Coordination Council For North American Affairs MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Coordination Council For North American Affairs MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

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> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

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Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

A number of respondents, including the one named above, have failed to allege that they are United States citizens, resident aliens, or domestic subsidiaries of foreign nationals entitled to make contributions. In light of the unrefuted allegations in the complaint that such persons are foreign nationals, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Chad K. Taniguchi, Esquire
Paul Alston, Esquire
Paul, Johnston, Alston & Hunt
Suite 1300, Pacific Tower
1001 Bishop Street
Honolulu, HI 96812-4438

RE: MURs 2846 and 2892
Yasuo Yasuda, aka Han Kuk Chun

Dear Messrs. Taniguchi and Alston:

On April 17, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Yasuo Yasuda, aka Han Kuk Chun violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Yasuo Yasuda (a.k.a. Han Kuk Chun)

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Yasuo Yasuda (a.k.a. Han Kuk Chun) MUR 2892

1. State your name, address (home and business), telephone number (home and business) and occupation.

2. State your nationality.

3. Are you a resident alien of the United States? If so, provide your INS folder number.

4. If you are not a United States citizen or a permanent resident alien of the United States, list all contributions (date, amount, recipient) made by you to federal, state and local elections.

5. List all persons who participated in the decision to make each contribution noted above.

6. If the contributions noted above were made from funds other than your own, state the source of funds used to make these contributions.

The Commission requests the following documents: a copy of your green card if you answered question 3 in the affirmative, copies of all checks or receipts for contributions you were required to list in response to interrogatory 4.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Yasuo Yasuda (a.k.a. Han Kuk Chun) MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA").

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
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In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Alan M. Goda, Esquire
Kobayahi, Watanabe, Sugita, Kawashima & Goda
Hawaii Tower, 8th Floor
745 Fort Street
Honolulu, HI 96813-3889

RE: MUR 2892
Hachidai USA, Inc.

Dear Mr. Goda:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Hachidai USA, Inc. violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: Hachidai USA, Inc.

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter o the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may oth wise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Hachidai USA, Inc. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Hachidai USA, Inc. MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The Commission has established a two-pronged test enabling domestic subsidiaries of foreign nationals to make political contributions. In order to meet the requirements of this test, an entity associated with a foreign national (either as a domestic subsidiary or as a state political action committee) must demonstrate that it does not receive funds for the contributions from its parent foreign national, and that the parent foreign national does not exercise any control or decision making responsibility regarding the contribution. Additionally, the source of the funds must be examined. Satisfying this first prong requires examining the identity of the decision makers, including the officers and directors of the domestic subsidiary.
The above-named respondent has failed to satisfy this criteria. Consequently, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

James Stone, Esquire
Fujiyama, Duffy & Fujiyama
Suite 2700, Pauahi Tower, Bishop Square
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 2892
Minami Group (USA) Inc.

Dear Mr. Stone:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Minami Group (USA) Inc. violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

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"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Minami Group (USA) MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Minami Group (USA), Inc. MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

A number of respondents, including the one named above, have failed to allege that they are United States citizens, resident aliens, or domestic subsidiaries of foreign nationals entitled to make contributions. In light of the unrefuted allegations in the complaint that such persons are foreign nationals, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Michael K. Tanigawa, Esquire
Tanigawa & Tanigawa
Suite 1550, Pacific Tower
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 2846
Masao Hayashi

Dear Mr. Tanigawa:

On April 17, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Masao Hayashi violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Masao Hayashi

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Masao Hayashi MUR 2892

1. State your name, address (home and business), telephone number (home and business) and occupation.

2. State your nationality.

3. Are you a resident alien of the United States? If so, provide your INS folder number.

4. If you are not a United States citizen or a permanent resident alien of the United States, list all contributions (date, amount, recipient) made by you to federal, state and local elections.

5. List all persons who participated in the decision to make each contribution noted above.

6. If the contributions noted above were made from funds other than your own, state the source of funds used to make these contributions.

The Commission requests the following documents: a copy of your green card if you answered question 3 in the affirmative, copies of all checks or receipts for contributions you were required to list in response to interrogatory 4.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Masao Hayashi MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

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Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

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> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used ... different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

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In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

CONTRIBUTORS CONCEDING OR FAILING TO DENY THAT THEY ARE FOREIGN NATIONALS

One individual and three corporations admit that they are foreign nationals. Some acknowledge that they were prohibited from contributing to state and local elections. Others contest the applicability of section 441e to the activity in question. The above-noted respondent does not contest foreign national status. Consequently, there is reason to believe respondent violated section 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Karl K. Kobayashi, Esquire
Carlsmith, Wichman, Case, Mukai & Ichiki
Suite 2200, Pacific Tower
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 2892
Taiyo Hawaii Comany, LTD

Dear Mr. Kobayashi:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Taiyo Hawaii Comany, LTD violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: Taiyo Hawaii Company, LTD.

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Taiyo Hawaii Company, LTD. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Taiyo Hawaii Company, LTD. MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office." (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

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In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

CONTRIBUTORS CONCEDING OR FAILING TO DENY THAT THEY ARE FOREIGN NATIONALS

One individual and three corporations admit that they are foreign nationals. Some acknowledge that they were prohibited from contributing to state and local elections. Others contest the applicability of section 441e to the activity in question. The above-noted respondent does not contest foreign national status. Consequently, there is reason to believe respondent violated section 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Ward D. Jones, Esquire
Chuck, Jones and MacLaren
Suite 1814, 745 Fort Street
Honolulu, HI 96813-3818

RE: MUR 2892
Pearl Country Club of Hawaii

Dear Mr. Jones:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Pearl Country Club of Hawaii violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Pearl Country Club of Hawaii

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Pearl Country Club of Hawaii MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Pearl Country Club of Hawaii MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to [illegible] contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

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Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

L.C. Shu
Executive Vice President
ICBC (Int'l Commercial Bank of China)
40 Wall Street
New York, N.Y. 10005

RE: MUR 2892
ICBC (Int'l Commercial Bank of China)

Dear Mr. Shu:

On June 6, 1989, the Federal Election Commission notified ICBC (Int'l Commercial Bank of China) of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe ICBC (Int'l Commercial Bank of China) violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against ICBC (Int'l Commercial Bank of China). You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against ICBC (Int'l Commercial Bank of China), the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Designation of Counsel Form
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: International Commercial Bank of China

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES

To: International Bank of China

1. List all contributions made to state and local political committees in Hawaii.

2. Identify all subsidiaries located in Hawaii and list all contributions made by them to state and local political committees.

3. Identify all officers and directors. State whether they have made contributions to Hawaii state and local elections. If so, for each list the date, amount, and recipient committee.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: International Commercial Bank of China MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The response of the International Bank of China states that it has a policy of not contributing to any individuals on any political parties on any level, is unfamiliar with the candidate in question, and does not do business in Hawaii. The complaint in MUR 2892, however, listed this respondent as contributing $500 to the Friends of Fasi on September 4, 1987, and included the page of the Fasi Committee's state reports listing this contribution. In light of this evidence that a contribution may have been made, there is reason to believe respondent violated section 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Yoshimitsu Sugiyama, President
Waikiki Joy Hotel
320 Lewers Street
Honolulu, Hawaii 96815

RE: MUR 2892
Hawaii Sekitei Corp

Dear Mr. Sugiyama:

On June 6, 1989, the Federal Election Commission notified Hawaii Sekitei Corp of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Hawaii Sekitei Corp violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against Hawaii Sekitei Corp. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against Hawaii Sekitei Corp, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either

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proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Designation of Counsel Form
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: Hawaii Sekitei Corporation

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

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Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Hawaii Sekitei Corporation MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Hawaii Sekitei Corporation MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

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sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

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In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

CONTRIBUTORS CONCEDING OR FAILING TO DENY THAT THEY ARE FOREIGN NATIONALS

One individual and three corporations admit that they are foreign nationals. Some acknowledge that they were prohibited from contributing to state and local elections. Others contest the applicability of section 441e to the activity in question. The above-noted respondent does not contest foreign national status. Consequently, there is reason to believe respondent violated section 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

James J. Stone, Esquire
Fujiyama, Duffy & Fujiyama
Suite 2700, Pauahi Tower, Bishop Square
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 2846
Takayuki Mizutani

Dear Mr. Stone:

On April 17, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Takayuki Mizutani violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Takayuki Mitzutani

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Takayuki Mitzutani MUR 2892

1. State your name, address (home and business), telephone number (home and business) and occupation.

2. State your nationality.

3. Are you a resident alien of the United States? If so, provide your INS folder number.

4. If you are not a United States citizen or a permanent resident alien of the United States, list all contributions (date, amount, recipient) made by you to federal, state and local elections.

5. List all persons who participated in the decision to make each contribution noted above.

6. If the contributions noted above were made from funds other than your own, state the source of funds used to make these contributions.

The Commission requests the following documents: a copy of your green card if you answered question 3 in the affirmative, copies of all checks or receipts for contributions you were required to list in response to interrogatory 4.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Takayuki Mizutani MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

A number of respondents, including the one named above, have failed to allege that they are United States citizens, resident aliens, or domestic subsidiaries of foreign nationals entitled to make contributions. In light of the unrefuted allegations in the complaint that such persons are foreign nationals, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Howard R. Green, Esquire
Green, Ning, Lilly, & Jones
707 Richards Street, Suite 700
Honolulu, HI 96813

RE: MURs 2846 and 2892
Friends of Frank Fasi

Dear Mr. Green:

On April 17, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Friends of Frank Fasi violated 2 U.S.C. § 441e, a provision of the Act. Also on this date the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Friends of Frank Fasi

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES

TO: Friends of Frank Fasi

1. Regarding the complaint or complaints you received in the above captioned matter, state whether you have received any contributions from the alleged foreign nationals noted in the complaint. If so, for each, list the name of the contributor, amount, date, and whether or not such contribution has been refunded.

2. List all other contributions received from foreign nationals, and for each, list the name of the contributor, amount, date, and whether or not such contribution has been refunded.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Friends of Frank Fasi MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter [illegible] character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used [illegible] parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

The campaign of Frank Fasi, the Mayor of Honolulu, also admits to accepting contributions from foreign nationals. The response groups the contributions into four groups. First, the response lists contributions refunded by the committee prior to when the complaint in this matter was filed. Second, the response lists contributions refunded after the complaint in this matter was filed. Third, the response lists contributions that are allegedly not made via a foreign national. Because the response does not consider the elements deemed critical by the Commission, this Office does not consider this listing to be determinative. Additionally, the response lists contributions to be refunded by the Committee due to lack of information whether or not such entities are foreign nationals or domestic subsidiaries of foreign nationals. Moreover, the response lists persons who chose not to communicate with the Fasi Committee, as well as one contributor, Michisaburo Hayashi, who the campaign was unable to contact. In light of the foregoing, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Neil Hulbert, Esquire
Hong, Iwai and Hulbert
Suite 2200, Pauahi Tower
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 2892
Y.Y. Valley Corp.

Dear Mr. Hulbert:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Y.Y. Valley Corp. violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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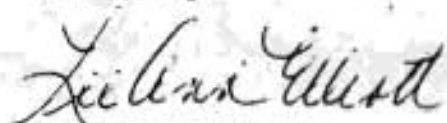
This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,



Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Y.Y. Valley Corporation

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto. the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Y.Y. Valley Corporation MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Y.Y. Valley Corporation MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

A number of respondents, including the one named above, have failed to allege that they are United States citizens, resident aliens, or domestic subsidiaries of foreign nationals entitled to make contributions. In light of the unrefuted allegations in the complaint that such persons are foreign nationals, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Neil Hulbert, Esquire
Hong, Iwai and Hulbert
Suite 2200, Pauahi Tower
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 2892
Royal Hawaiian Country Club, Inc.

Dear Mr. Hulbert:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1 , 1990, found that there is reason to believe Royal Hawaiian Country Club, Inc. violated 2 U.S.C. § 441e, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Questions
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Royal Hawaiian Country Club, Inc.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Royal Hawaiian Country Club MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Royal Hawaiian Country Club, Inc. MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

A number of respondents, including the one named above, have failed to allege that they are United States citizens, resident aliens, or domestic subsidiaries of foreign nationals entitled to make contributions. In light of the unrefuted allegations in the complaint that such persons are foreign nationals, there is reason to believe respondent violated 2 U.S.C. § 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Dickson C.H. Lee, Esquire
Okumura, Takushi, Funaki & Wee
Suite 1400, Grosvenor Center
733 Bishop Street
Honolulu, HI 96813

RE: MUR 2892
Sony Hawaii Company

Dear Mr. Lee:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On May 1 , 1990, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Sony Hawaii Company violated 2 U.S.C. § 441e. Accordingly, the Commission closed its file in this matter as it pertains to your client.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

Sincerely,

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Sharleen H. Oshiro, Esquire
Pioneer Plaza
900 Fort St. Mall, Suite 500
Honolulu, HI 96813

RE: MUR 2892
Servco Pacific Inc.

Dear Ms. Oshiro:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On May 1 , 1990, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Servco Pacific Inc. violated 2 U.S.C. § 441e. Accordingly, the Commission closed its file in this matter as it pertains to your client.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

Sincerely,

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 21, 1990

Roy Hiroshige
2547 Booth Road
Honolulu, HI 96813

RE: MUR 2846
Roy Hiroshige

Dear Mr. Hiroshige:

On April 17, 1989, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On May 1 , 1990, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe you violated 2 U.S.C. § 441e. Accordingly, the Commission closed its file in this matter as it pertains to you.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

Sincerely,

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Gregory M. Sato, Esquire
Torkildson, Katz, Jossem, Fonseca, Jaffe & Moore
AMFAC Building, 15th Floor
700 Bishop Street
Honolulu, HI 96813-4187

RE: MUR 2892
Plaza Hotel Nimitz Partners

Dear Mr. Sato:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On May 1 , 1990, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Plaza Hotel Nimitz Partners violated 2 U.S.C. § 441e. Accordingly, the Commission closed its file in this matter as it pertains to your client.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

Sincerely,

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Edean S. Ring, Esquire
1199 Dillingham Boulevard
Honolulu, HI 96817

RE: MURs 2846 and 2892
GEM Political Action
Committee

Dear Mr. Ring:

On April 17, 1989, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On May 1, 1990, the Commission found, on the basis of the information in the complaint, and information provided by your client, that there is no reason to believe GEM Political Action Committee violated 2 U.S.C. § 441e. Accordingly, the Commission closed its file in this matter as it pertains to your client.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

Sincerely,

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Stanley D. Suyat, Esquire
Carlsmith, Wichman, Case, Mukai, and Ichiki
1001 Bishop Street
Pacific Tower, Suite 2200
Honolulu, HI 96813

RE: MURs 2846 and 2892
Central Pacific Bank
Political Action Committee

Dear Mr. Suyat:

On April 17, 1989, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On May 1, 1990, the Commission found, on the basis of the information in the complaint, and information provided by your client, that there is no reason to believe Central Pacific Bank Political Action Committee violated 2 U.S.C. § 441e. Accordingly, the Commission closed its file in this matter as it pertains to your client.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

Sincerely,

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 21, 1990

Stanford Dubin, Esquire
5201 Auth Way
Camp Springs, MD 20746

RE: MUR 2892
Seafarers Intn'l Union

Dear Mr. Dubin:

On June 6, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On May 1 , 1990, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Seafarers Intn'l Union violated 2 U.S.C. § 441e. Accordingly, the Commission closed its file in this matter as it pertains to your client.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

Sincerely,

Lawrence M. Noble
General Counsel

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SATTERLEE STEPHENS BURKE & BURKE
230 PARK AVENUE
NEW YORK, N. Y. 10169-0079
(212) 818-9200

47 MAPLE STREET
SUMMIT, N.J. 07901
(201) 277-2221

TELEX NO. 233437
CABLE "SATERFIELD" NEW YORK
TELECOPIER (212) 818-9606, 9607

May 29, 1990

MUR 2892
DATE FILMED

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MAIL ROOM
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RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 MAY 30 AM 11: 30

VIA FEDERAL EXPRESS

Ms. Patty Reilly
Office of General Counsel
Federal Election Commission
Room 657
999 E Street N.W.
Washington, D.C. 20463

Re: MUR 2892
ICBC (International Commercial Bank of China)

Dear Ms. Reilly:

We are attorneys representing ICBC in the captioned matter. Regarding your letter dated May 21, 1990, ICBC's New York Agency has no directors who could provide information in response to the interrogatories you sent us, and ICBC's New York Agency's position is as stated in Mr. L.C. Shu's letter dated June 13, 1989, of which you already have a copy.

We have arranged to have a copy of the interrogatories sent to ICBC's Taipei Head Office, which will conduct further investigations of the alleged contribution.

Since ICBC is a large organization with a large number of officers overseas, it is virtually impossible for ICBC to complete investigation and to respond to the interrogatories within the 20 day time limit referred to in your May 21, 1990 letter.

Therefore, by this letter we request you to kindly extend our time limit by an additional 20 days.

Thank you,

Very truly yours,

Gregory H.K. Chiang

Gregory H.K. Chiang

GC/smm

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OGC 6383

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90 MAY 31 AM 10:32

STATEMENT OF DESIGNATION OF COUNSEL

HAND DELIVERED

MUR 2892

NAME OF COUNSEL: Gilman S. Burke

ADDRESS: Satterlee Stephens Burke & Burke
230 Park Avenue
New York, New York 10169

TELEPHONE: (212) 818-9200

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 MAY 31 PM 3:26

May 30, 1990
Date

Signature
Howard R. S. Ho
Senior Vice President
& General Manager

RESPONDENT'S NAME: International Commercial Bank of China

ADDRESS: 40 Wall Street - 22nd Floor
New York, New York 10005

HOME PHONE: (718)793-6540

BUSINESS PHONE: (212) 943-5000

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

June 8, 1990

Mr. Gregory H.K. Chiang
Satterlee, Stephens, Burke, & Burke
230 Park Avenue
New York, N.Y. 10169-0079

RE: MUR 2892
International Commercial Bank
of China

Dear Mr. Chiang:

This is in response to your letter dated May 29, 1990, which we received on May 30, 1990, requesting an extension of twenty days to respond to the above captioned matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on July 9, 1990.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Jonathan Bernstein
Assistant General Counsel

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OGC 6395

SATTERLEE STEPHENS BURKE & BURKE
230 PARK AVENUE
NEW YORK, N. Y. 10169-0079
(212) 818-9200

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TELEX NO. 233437
CABLE "SATERFIELD" NEW YORK
TELECOPIER (212) 818-9606, 9607

May 31, 1990

VIA FEDERAL EXPRESS

Ms. Patty Reilly
Office of General Counsel
Federal Election Commission
Room 657
999 E Street, N.W.
Washington, D.C. 20463

90 JUN -1 AM 10:23
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Re: MUR 2892
ICBC (International Commercial Bank of China)

Dear Ms. Reilly:

ICBC New York Agency has denied having made a contribution to Frank Fasi's campaign fund in its letter dated June 13, 1989 to the Federal Election Commission.

However, ICBC is cooperating with the Federal Election Commission by requesting the Head Office in Taiwan to conduct further inquiries about the alleged $500.00 contribution.

ICBC is a large corporation with many employees stationed overseas, and it is extremely cumbersome for it to comply with your demand for information. As stated in ICBC's previous correspondence dated June 13, 1989 to the Federal Election Commission, ICBC "did not know who Frank Fasi was, much less made a campaign contribution to his cause." Nevertheless, ICBC could like to resolve the matter as soon as possible.

We would be interested to know whether a "pre-probable cause conciliation" is possible without ICBC admitting to nor denying a violation of the Act.

Thank you.

Very truly yours,

Gregory Chiang

Gregory Chiang

GC:se

cc: Mr. Albert R.J. Liu
Vice President
ICBC, New York Agency

90 JUN -1 AM 10:40
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

90040357275 1

OGC 6410

TANIGAWA & TANIGAWA
Attorneys at Law
Suite 1550 Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813

Herbert H. Tanigawa
Michael K. Tanigawa

Telephone
(808) 521-8354
Fax
(808) 531-8263

May 30, 1990

Patty Reilly, Esq.
General Counsel's Office
Federal Election Commission
999 E.Street, NW
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN -4 PM 1:23

Re: MUR 2846
Masao Hayashi

Dear Ms. Reilly:

I hereby request an extension of time of twenty days in which to respond to the interrogatories and request for production of documents and to provide the Commission with additional information and materials for consideration. Since the initial notice of complaint, Mr. Hayashi has been transferred to Japan. The process of getting the requested information from Japan, preparing it as a response to an interrogatory here in Hawaii and then sending to Washington, D.C. is a time consuming process which I do not believe can be completed in the fifteen days allowed. Although every effort will be made to respond to the request as soon as possible I am asking for the maximum extension to allow for any unforeseen problems in transmitting the information from Japan and Hawaii to Washington, D.C.

Thank you for your help in this matter.

Sincerely,

Michael K. Tanigawa

MICHAEL K. TANIGAWA
Attorney for Masao Hayashi

2 4 0 4 3 5 7 2 7 5 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 8, 1990

Mr. Michael K. Tanigawa
Tanigawa & Tanigawa
Suite 1550, Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813

RE: MUR 2892
Masao Hayashi

Dear Mr. Tanigawa:

This is in response to your letter dated May 30, 1990, which we received on June 4, 1990, requesting an extension of twenty days to respond to the above captioned matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on July 3, 1990.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Jonathan Bernstein

BY: Jonathan Bernstein
Assistant General Counsel

2404357275 3

OGC 6405

HONG, IWAI AND HULBERT

ATTORNEYS AT LAW
SUITE 2200, PAUAHI TOWER
BISHOP SQUARE
1001 BISHOP STREET
HONOLULU, HAWAII 96813

GEORGE S. W. HONG
DONALD K. IWAI
NEIL F. HULBERT*
CAROL LEE HONG
JEFFREY C. WILK
ROY K. KAWANO
HARLAN Y. KIMURA

* A LAW CORPORATION

TELEPHONE
(808) 524-4900

FAX
(808) 526-5473

June 1, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN -4 PM 1:26

Ms. Patty Reilly
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Ms. Reilly:

Re: MUR 2892
Royal Hawaiian Country Club, Inc.
Y. Y. Valley Corporation

Reference is hereby made to the letter of May 21, 1990 from Lee Ann Elliott, Chair of the Federal Election Commission, which we received on May 23, 1990. Request is hereby made for an extension of 30 days within which to respond to the letter on the grounds that the responsible officer for the two corporations is not currently in the State of Hawaii and will not be returning until approximately June 10, 1990. We request an extension until July 7, 1990, within which to respond. The extension will give us an opportunity to explore all available options with the corporation's responsible officers and permit them time to obtain a decision from the boards of directors.

Very truly yours,

HONG, IWAI AND HULBERT

By Neil F. Hulbert
Neil F. Hulbert

NFH:et

90435723 4

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

June 8, 1990

Mr. Neil F. Hulbert
Hong, Iwai, and Hulbert
Suite 2200, Pauahi Tower
1001 Bishop Street
Honolulu, Hawaii 96813

RE: MUR 2892
Royal Hawaiian Country Club, Inc.
Y.Y. Valley Corporation

Dear Mr. Hulbert:

This is in response to your letter dated June 1, 1990, which we received on June 4, 1990, requesting an extension of thirty days to respond to the above captioned matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on July 7, 1990.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Jonathan Bernstein

BY: Jonathan Bernstein
Assistant General Counsel

9404357275 5

OGC 6402

HONG, IWAI AND HULBERT

ATTORNEYS AT LAW
SUITE 2200, PAUAHI TOWER
BISHOP SQUARE
1001 BISHOP STREET
HONOLULU, HAWAII 96813

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GEORGE S. W. HONG
DONALD K. IWAI
NEIL F. HULBERT*
CAROL LEE HONG
JEFFREY C. WILK
ROY R. KAWANO
HARLAN Y. KIMURA

* A LAW CORPORATION

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUN -4 PM 12:38

June 1, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN -4 PM 1:27

Ms. Patty Reilly
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Ms. Reilly:

Re: MUR 2892
Mokuleia Land Company

Reference is hereby made to the letter of May 21, 1990 from Lee Ann Elliott, Chair of the Federal Election Commission, which we received on May 23, 1990. Request is hereby made for an extension to July 7, 1990, within which to respond to the letter. This will permit us an opportunity to discuss all available options with our client and allow the business to make due deliberation and take the appropriate votes to determine its course of action.

Very truly yours,

HONG, IWAI AND HULBERT

By Neil F. Hulbert
Neil F. Hulbert

NFH:et

2404357276

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 8, 1990

Mr. Neil F. Hulbert
Hong, Iwai, and Hulbert
Suite 2200, Pauahi Tower
1001 Bishop Street
Honolulu, Hawaii 96813

RE: MUR 2892
Mokuleia Land Company

Dear Mr. Hulbert:

This is in response to your letter dated June 1, 1990, which we received on June 4, 1990, requesting an extension of thirty days to respond to the above captioned matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on July 7, 1990.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Jonathan Bernstein

BY: Jonathan Bernstein
Assistant General Counsel

9 4 0 4 3 5 7 2 7 5 7

0606420

HONG, IWAI AND HULBERT

ATTORNEYS AT LAW
SUITE 2200, PAUAHI TOWER
BISHOP SQUARE
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HONOLULU, HAWAII 96813

GEORGE S. W. HONG
DONALD K. IWAI
NEIL F. HULBERT*
CAROL LEE HONG
JEFFREY C. WILK
ROY K. KAWANO
HARLAN Y. KIMURA

* A LAW CORPORATION

TELEPHONE
(808) 524-4900

FAX
(808) 528-5473

June 1, 1990

Ms. Lee Ann Elliott
Chair
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT
90 JUN -4 PM 2:27

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN -4 PM 4:13

Dear Ms. Elliott:

Re: MUR 2846 and 2892
Yoshinori "Ken" Hayashida

Reference is hereby made to your letter of May 21, 1990, in which you state that "the Commission, on May 1, 1990, found that there is no reason to believe Yoshinori "Ken" Hayashida violated 2 U.S.C. §441e, a provision of the Act."

We accept the Commission's determination of "no reason to believe" and assume that this terminates the above-entitled matters as they relate to Mr. Hayashida.

Very truly yours,

HONG, IWAI AND HULBERT

By Neil F. Hulbert
Neil F. Hulbert

NFH:et

2404357272/38

OGC 6403

KOBAYASHI, WATANABE, SUGITA, KAWASHIMA & GODA
ATTORNEYS AT LAW
HAWAII TOWER, 8th FLOOR
745 FORT STREET
HONOLULU, HAWAII 96813-3889
TELEPHONE (808) 544-8300

Kevin S.C.Cheng*
Kate Feldman*
Alan M. Goda*
Lyle Y. Hasada*
J. Douglas Ing*
Cheryl K. Kakazu*
James Kawashima*
Bert T. Kobayashi, Jr.*
John T. Komeiji*
Wesley H. Kondo*
Benjamin A. Kudo*
Dale W. Lee*
Ronald Y. K. Leong*
Michael A. Lorusso*
Lex R. Smith*
Kenneth Y. Sugita*
Robert T. Takemoto*
Jeffrey N. Watanabe*
Cynthia Winegar*
Randall Y. Yamamoto*

*A Law Corporation

Jan M. L. Y. Aina
George B. Apter
Ferdinand G. Arenza
Wendell H. Fuji
Charles W. Gall
Roxanne K. Goo
Lyle S. Hosoda
Robert K. Ishihara
Donna Y. Kanemaru
Pamela J. Larson
Alan K. Maeda
David L. Monroy
Janeen A. Olds
Fred Troncone

OF COUNSEL:
George R. Ariyoshi
Bert T. Kobayashi, Sr.
Russell K. Kono

Facsimile: (808) 544-8399
Telex: 8602396586 MCI
MCI Mail: 2396586
ABA/Net: ABA2281

June 1, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN -4 PM 1:27

Federal Election Commission
Office of the General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Attn: Jonathon Bernstein

Re: MUR 2846 and 2892
Mauna Lani Resort, Inc.
Mauna Lani Resort PAC

Dear Mr. Bernstein:

Thank you for meeting with me today. As we discussed, I would like to request an extension of time to respond to the letter and memo dated May 21, 1990, whereby the FEC found that there is reason to believe that Mauna Lani Resort, Inc. violated 2 U.S.C. Sec. 441e. My office received these documents on or about May 29, 1990, and I would request an extention until July 1, 1990 for the following reasons:

1. I will be on vacation in Europe from June 3-22, after which time I will be in Washington, D.C. for business from June 22-July 8. I will not return to my office in Hawaii until July 9, 1990.

2. Due to the complexities of this case, it has been pending my response to the FEC's initial notification of the complaint filed on May 24, 1989.

Thank you for your consideration of my request. Please continue to direct any questions or correspondence to my office.

Sincerely,

Cheryl K. Kakazu

CHERYL K. KAKAZU
for
KOBAYASHI, WATANABE, SUGITA,
KAWASHIMA & GODA

90 JUN -1 AM 10:25

90040357259

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

June 8, 1990

Ms. Cheryl Kakazu
Kobayashi, Watanabe, Sugita,
Kawashima, & Goda
Hawaii Tower, 8th Floor
Honolulu, Hawaii 96813-3889

RE: MUR 2892
Mauna Lani Resort, Inc.
Mauna Lani Resort, PAC

Dear Ms. Kakazu:

This is in response to your letter dated June 1, 1990, which we received on June 4, 1990, requesting an extension of time to respond to the above captioned matter. After considering the circumstances presented in your letter, I have granted an extension. Accordingly, your response is due by the close of business on July 10, 1990.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Jonathan Bernstein

BY: Jonathan Bernstein
Assistant General Counsel

9404357276 0

OGC 6401

CADES SCHUTTE FLEMING & WRIGHT

ATTORNEYS AT LAW

J. RUSSELL CADES
WILLIAM L. FLEMING
HAROLD S. WRIGHT
JAMES S. CAMPBELL
A. SINGLETON CAGLE
ROBERT B. BUNN
WILLIAM M. SWOPE
DONALD A. BECK
DOUGLAS E. PRIOR
E. GUNNER SCHULL
THOMAS P. HUBER
MICHAEL P. PORTER
DONALD E. SCEARCE
RICHARD A. HICKS
ROGER H. EPSTEIN
JEFFREY S. PORTNOY
EDWARD W. BOYLE
BERNICE LITTMAN
NICHOLAS C. DREHER
MARK A. HAZLETT
PHILIP J. LEAS

DAVID C. LARSEN
STEPHEN B. McDONALD
LARRY T. TAKUMI
WILLIAM A. CARDWELL
C. MICHAEL HARE
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NELSON N. S. CHUN
DARRYL H. W. JOHNSTON
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DAVID SCHULMEISTER
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MILTON M. YASUNAGA
SUSAN OKI MOLLWAY
GINO L. GABRIO
COLIN O. MIWA
MARTIN E. WEIR
PETER W. DILSON

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TELEX 7238589
TELEPHONE (808) 521-9200

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RENE E. QUIRI
GAIL M. TAMASHIRO
THOMAS YAMACHIKA
GRACE NIHEI KIDO
KEITH A. LEE
STEWART J. MARTIN
ARLENE S. KISHI
DONNA Y. L. LEONG
PATRICIA J. McHENRY
R. JAMES STEINER, JR.
J. ROBERT ARNETT II
DAVID F. E. BANKS
G. HISAE ISHII-CHANG
J. THOMAS MALONEY, JR.

VALERIE SMITH BOYD
BLANE T. YOKOTA
ERNEST H. NOMURA
DANIEL A. MORRIS
JEFFREY D. WATTS
THERESA A. FISHER*
GLENN H. KOBAYASHI
CAROL L. W. HEE
DAVID J. GIERLACH
LANCE A. LOPES
ERIC H. ROOSE
MARJORIE A. LAU
LAURIE A. KURIBAYASHI
MICHAEL K. KIRSCHNER
JAMES H. ASHFORD
EDITH K. KAWAI RADL
ANN M. MISURA

*CALIFORNIA BAR ONLY

C. FREDERICK SCHUTTE
(1921-1988)

OF COUNSEL
MILTON CADES

WRITER'S DIRECT DIAL NUMBER
521-9249

May 30, 1990

Michael Troy, Esq.
Office of the General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2892

Dear Mr. Troy:

By letter dated May 21, 1990, ANA Hotels Hawaii, Inc. ("ANA Hotels") was notified of the Federal Election Commission's request for interrogatories and production of documents.

We wish to supplement our response and demonstrate that no action should be taken against ANA Hotels in this matter. However, to enable us to gather the relevant materials and frame an appropriate response, we respectfully request that an extension of twenty (20) days be granted to answer this request. We called Michael Troy on May 30, 1990 to request such an extension. We are requesting this extension because the attorney handling this matter, Larry T. Takumi, is away from the office and will not return within adequate time for a response to be filed with your office.

If you have any questions, please contact me at (808) 521-9249.

Very truly yours,

Carol L W Hee

Carol L. W. Hee
for
CADES SCHUTTE FLEMING & WRIGHT

CLWH/jsk
4117I/5

cc: Millie M. Ludwick

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN -4 PM 1:39

90044357261

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 8, 1990

Ms. Carol L.W. Hee
Cades, Schutte, Fleming, & Wright
P.O. Box 939
Honolulu, Hawaii 96808

RE: MUR 2892
ANA Hotels Hawaii, Inc.

Dear Ms. Hee:

This is in response to your letter dated May 30, 1990, which we received on June 4, 1990, requesting an extension of twenty days to respond to the above captioned matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on July 3, 1990.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Jonathan Bernstein

BY: Jonathan Bernstein
Assistant General Counsel

9404357272/62

OGC 6427

TANIGAWA & TANIGAWA
Attorneys at Law
Suite 1550 Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813

Herbert H. Tanigawa
Michael K. Tanigawa

Telephone
(808) 521-8354
Fax
(808) 531-8263

June 1, 1990

Patty Reilly, Esq.
General Counsel's Office
Federal Election Commission
999 E.Street, NW
Washington, D.C. 20463

90 JUN -4 PM 12: 30
FEDERAL ELECTION COMMISSION

Re: MUR 2892
Japan Travel Bureau International, Inc.

90 JUN -5 AM 11: 09
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Dear Ms. Reilly:

Pursuant to 11 C.F.R. § 111.18(d) we are requesting pre-probable cause conciliation in the above-referenced matter.

Sincerely,

Michael K. Tanigawa

MICHAEL K. TANIGAWA

2 4 0 4 3 5 7 2 1 0 3

06C 6426

TANIGAWA & TANIGAWA
Attorneys at Law
Suite 1550 Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813

Herbert H. Tanigawa
Michael K. Tanigawa

Telephone
(808) 521-8354
Fax
(808) 531-8263

June 1, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUN -4 PM 12:30

Patty Reilly, Esq.
General Counsel's Office
Federal Election Commission
999 E.Street, NW
Washington, D.C. 20463

Re: MUR 2892
Masao Hayashi

Dear Ms. Reilly:

Pursuant to 11 C.F.R. § 111.18(d) we are requesting pre-probable cause conciliation in the above-referenced matter.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN -5 AM 11:09

Sincerely,

Michael K. Tanigawa

MICHAEL K. TANIGAWA

7 4 0 4 3 5 7 2 7 6 4

OGC 6424

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUN -4 PM 1:16

Iwai, Motooka & Goto
ATTORNEYS AT LAW
A LAW CORPORATION
SUITE 502, HASEKO CENTER
820 MILILANI STREET
HONOLULU, HAWAII 96813

WILFRED K. IWAI
MILTON M. MOTOOKA
ARTHUR K. GOTO

AREA CODE 808
TELEPHONE 537-1935
FAX 528-5813

May 31, 1990

Federal Election Commission
999 E. Street N.W.
Washington, D.C. 20463

Attn: Patty Reilly, Attorney-at-Law

Ladies and Gentlemen:

Re: MUR 2892
Haseko (Hawaii), Inc.
Request for Extension

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN -5 AM 11:08

1. Receipt of your communication dated May 21, 1990 together with the accompanying Interrogatories and Request for Production is acknowledged. They were received at my office on May 23, 1990.

2. For the present, respondent respectfully continues to maintain that the Commission lacks jurisdiction over contributions to State of Hawaii offices. However, without waiver of that position, we would like to request that an extension of twenty (20) days (to and including June 27, 1990) be afforded to respondent to prepare its Answers to your Interrogatories and to prepare the response to your Production Request.

3. Although the communication was received on May 23, 1990, the attorney and the executive of the respondent charged with this matter were unable to meet until May 31, 1990 due to the fact that such executive was on an out of state trip and due also to conflicting schedules and appointments.

4. Also, additional time is needed to research the files of the respondent to answer your requests and to locate documents. The period covered includes some three and one-half years, including a period when prior staff has departed. Thus it will take some considerable time to locate, copy and prepare answers as well as produce documents.

9 4 0 4 3 5 7 2 7 6 5

Iwai, Motooka & Goto
ATTORNEYS AT LAW
A LAW CORPORATION

5. Your courtesy of this extension would be thus appreciated.

Very truly yours,

Arthur K. Goto

ARTHUR K. GOTO

AKG:njh
8438C

9 4 0 4 3 5 7 2 7 6 6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 8, 1990

Mr. Arthur K. Goto
Iwai, Motooka, & Goto
Suite 502, Haseko Center
820 Mililani Street
Honolulu, Hawaii 96813

RE: MUR 2892
Haseko (Hawaii) Inc.

Dear Mr. Goto:

This is in response to your letter dated May 31, 1990, which we received on June 5, 1990, requesting an extension of twenty days to respond to the above captioned matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on June 27, 1990.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Jonathan Bernstein
Assistant General Counsel

2404357276 7

OGC 6480

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90 JUN -8 AM 10:50

CARLSMITH, WICHMAN, CASE, MUKAI AND ICHIKI
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING LAW CORPORATIONS
1001 BISHOP STREET
PACIFIC TOWER, SUITE 2200
HONOLULU, HAWAII 96813
CABLE ADDRESS: CWCMI
TELEX 723-8770 CWCMI HR
TELECOPIER (808) 523-0842

HONOLULU OFFICE
P. O. BOX 656
HONOLULU, HAWAII 96809
(808) 523-2500

GUAM OFFICE
P. O. BOX BF
AGANA, GUAM 96910
(671) 472-6813
TELEX 721-6445 CWCMI GM

LOS ANGELES OFFICE
P. O. BOX 7169
LOS ANGELES, CALIFORNIA 90071-0169
(213) 955-1200

DIRECT DIAL NUMBER:
(808) 523-2535

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P. O. BOX 686
HILO, HAWAII 96721-0686
(808) 935-6644

KONA OFFICE
P. O. BOX 1720
KAILUA-KONA, HAWAII 96745-1720
(808) 329-6464

MAUI OFFICE
P. O. BOX 1086
WAILUKU, HAWAII 96793
(808) 242-4535

SAIPAN OFFICE
P. O. BOX 241 CHRB
SAIPAN, MP 96950
(670) 322-3455
TELEX 783-658 CWCMI SPN

June 5, 1990

VIA TELECOPIER
AND REGULAR MAIL

Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Attention: Patty Reilly, Esq.

Re: MUR 2846 and MUR 2892/
Pan-Pacific Construction, Inc.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN -8 PM 12:08

Gentlemen:

Pursuant to 11 C.F.R. § 111.18(d), Jet Hawaii, Inc., hereby requests that the parties pursue pre-probable cause conciliation. Please advise us as soon as possible whether the Office of General Counsel will be recommending acceptance of Jet Hawaii, Inc.'s request for pre-probable cause conciliation. Jet Hawaii, Inc. wishes to fully cooperate with the Commission in connection with this matter. If you have any questions or require additional information, please contact the undersigned. Thank you for your cooperation and we shall await your response.

Very truly yours,

Karl K. Kobayashi

Karl K. Kobayashi

KK:cai
cc: Pan-Pacific Construction, Inc.

19019498

2404357218

OGC 6481

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90 JUN -8 AM 10:50

CARLSMITH, WICHMAN, CASE, MUKAI AND ICHIKI
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING LAW CORPORATIONS
1001 BISHOP STREET
PACIFIC TOWER, SUITE 2200
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CABLE ADDRESS: CWCMI
TELEX 723-8770 CWCMI HR
TELECOPIER (808) 523-0842

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LOS ANGELES, CALIFORNIA 90071-0169
(213) 955-1200

DIRECT DIAL NUMBER:
(808) 523-2535

HILO OFFICE:
P. O. BOX 686
HILO, HAWAII 96721-0686
(808) 935-6644

KONA OFFICE:
P. O. BOX 1720
KAILUA-KONA, HAWAII 96745-1720
(808) 329-6464

MAUI OFFICE
P. O. BOX 1086
WAILUKU, HAWAII 96793
(808) 242-4535

SAIPAN OFFICE
P. O. BOX 241 CHRB
SAIPAN, MP 96950
(670) 322-3455
TELEX 783-658 CWCMI SPN

June 5, 1990

90 JUN -8 PM 12:08

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

VIA TELECOPIER
AND REGULAR MAIL

Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Attention: Patty Reilly, Esq.

Re: MUR 2892/Jet Hawaii, Inc.

Gentlemen:

Pursuant to 11 C.F.R. § 111.18(d), Jet Hawaii, Inc., hereby requests that the parties pursue pre-probable cause conciliation. Please advise us as soon as possible whether the Office of General Counsel will be recommending acceptance of Jet Hawaii, Inc.'s request for pre-probable cause conciliation. Jet Hawaii, Inc. wishes to fully cooperate with the Commission in connection with this matter. If you have any questions or require additional information, please contact the undersigned. Thank you for your cooperation and we shall await your response.

Very truly yours,

Karl K. Kobayashi

Karl K. Kobayashi

KK:cai
cc: Jet Hawaii, Inc.

X9019453

2404357209

OGC 6451

FUJIYAMA, DUFFY & FUJIYAMA
ATTORNEYS AT LAW, A LAW CORPORATION
SUITE 2700, PAUAHI TOWER, BISHOP SQUARE
1001 BISHOP STREET
HONOLULU, HAWAII 96813

TELEPHONE
(808) 538-0802
TELECOPIER
(808) 538-5117

WALLACE S. FUJIYAMA
JAMES E. DUFFY, JR.
RODNEY M. FUJIYAMA
JAMES J. STONE
ARCHIE T. IKEHARA
RALPH R. LA FOUNTAINE
COLBERT M. HATSUMOTO
GLENN K. SATO
STEVEN J. T. CHOW

DAVID Z. ARAKAWA
LESLIE E. KOBAYASHI
NANCY J. RYAN
SCOTT S. HASHIMOTO
HOLLY T. M. SHIKADA
WYNDE M. YAMAMOTO
WILLIAM H. TIM
BRUCE K. CAMPBELL
WARD F. M. FUJIMOTO
DEXTER D. DEL ROSARIO
ROSS N. TADSARA
CHRIS A. THOMAS

TO: FEDERAL ELECTIONS COMMISSION
Attn: Patty Reily

FROM: James Stone, Esq.

RE: MUR 2892
Daiei Hawaii Investments, Inc.

DATE: June 2, 1990

Express Mail
& Telecopier

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN -6 PM 3:17

2404357277 0

Gentlemen, this memo is in response to your May 21, 1990 letter to me regarding the above matter.

The purpose of this memo is to request an extension of time on all deadlines referred to and/or set forth in your letter.

The reason for the request is that I've been out of town from May 10, 1990 to June 1, 1990 and I'm leaving town again on June 2, 1990 and will return to Hawaii on June 7, 1990

The extension requested is for the maximum period of time which I understand to be twenty (20) days. If the extension is granted, it's my understanding that the response deadline will be June 28, 1990 instead of June 8, 1990.

I will ask my secretary to forward your letter with all attachments to our client for purposes of gathering documents and preparing answers to your questions.

Your cooperation and understanding is appreciated. Thank you.

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

June 8, 1990

Mr. James Stone, Esq.
Fujiyama, Duffy, & Fujiyama
Suite 2700, Pauahi Tower
1001 Bishop Street
Honolulu, Hawaii 96813

RE: MUR 2892
Daiei Hawaii Investments,
Inc.

Dear Mr. Stone:

This is in response to your letter dated June 2, 1990, which we received on June 6, 1990, requesting an extension of twenty days to respond to the above captioned matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on June 28, 1990.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Jonathan Bernstein

BY: Jonathan Bernstein
Assistant General Counsel

2404357277 1

OOC 6450

FUJIYAMA, DUFFY & FUJIYAMA
ATTORNEYS AT LAW, A LAW CORPORATION
SUITE 2700, PAUAHI TOWER, BISHOP SQUARE
1001 BISHOP STREET
HONOLULU, HAWAII 96813

TELEPHONE
(808) 536-0802
TELECOPIER
(808) 536-5117

WALLACE S. FUJIYAMA
JAMES E. DUFFY, JR.
RODNEY M. FUJIYAMA
JAMES J. STONE
ARCHIE T. IKEHARA
RALPH R. LA FOUNTAINE
COLBERT M. MATSUMOTO
GLENN K. SATO
STEVEN J. T. CHOW

DAVID Z. ARAKAWA
LESLIE E. KOBAYASHI
NANCY J. RYAN
SCOTT S. HASHIMOTO
HOLLY T. M. SHIKADA
WYNDE M. YAMAMOTO
WILLIAM H. YIM
BRUCE K. CAMPBELL
WARD F. N. FUJIMOTO
DEXTER D. DEL ROSARIO
ROSS N. TAOSAKA
CHRIS A. THOMAS

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN -6 PM 3:17

TO: FEDERAL ELECTIONS COMMISSION
Attn: Patty Reily

FROM: James Stone, Esq.

RE: MUR 2892
Minami Group (USA) Inc.

DATE: June 2, 1990

Via Express Mail
& Telecopier

Gentlemen, this memo is in response to your May 21, 1990 letter to me regarding the above matter.

The purpose of this memo is to request an extension of time on all deadlines referred to and/or set forth in your letter.

The reason for the request is that I've been out of town from May 10, 1990 to June 1, 1990 and I'm leaving town again on June 2, 1990 and will return to Hawaii on June 7, 1990.

The extension requested is for the maximum period of time which I understand to be twenty (20) days. If the extension is granted, it's my understanding that the response deadline will be June 28, 1990 instead of June 8, 1990.

I will ask my secretary to forward your letter with all attachments to our client for purposes of gathering documents and preparing answers to your questions.

Your cooperation and understanding is appreciated. Thank you.

9 4 0 4 3 5 7 2 7 1 2

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

June 8, 1990

Mr. James Stone, Esq.
Fujiyama, Duffy, & Fujiyama
Suite 2700, Pauahi Tower
1001 Bishop Street
Honolulu, Hawaii 96813

RE: MUR 2892
Minami Group (USA) Inc.

Dear Mr. Stone:

This is in response to your letter dated June 2, 1990, which we received on June 6, 1990, requesting an extension of twenty days to respond to the above captioned matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on June 28, 1990.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Jonathan Bernstein
Assistant General Counsel

2404357277 3

OGC 6449

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90 JUN -6 AM 10: 36

FUJIYAMA, DUFFY & FUJIYAMA
ATTORNEYS AT LAW, A LAW CORPORATION
SUITE 2700, PAUAHI TOWER, BISHOP SQUARE
1001 BISHOP STREET
HONOLULU, HAWAII 96813

TELEPHONE (808) 536-0802
TELECOPIER (808) 536-5117

WALLACE S. FUJIYAMA
JAMES E. DUFFY, JR.
RODNEY M. FUJIYAMA
JAMES J. STONE
ARCHIE T. IREHARA
RALPH R. LA FOUNTAINE
COLBERT M. MATSUMOTO
GLENN K. SATO
STEVEN J. T. CHOW

DAVID J. ARAKAWA
LESLIE E. KOBAYASHI
NANCY J. RYAN
SCOTT S. HASHIMOTO
HOLLY T. N. SHIKADA
WYNDE M. YAMAMOTO
WILLIAM H. YIM
BRUCE K. CAMPBELL
WARD F. N. FUJIMOTO
DEXTER D. DEL ROSARIO
ROSS N. TAOSAKA
CHRIS A. THOMAS

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN -6 PM 3: 17

TO: FEDERAL ELECTIONS COMMISSION
Attn: Patty Reily

FROM: James Stone, Esq.

RE: MUR 2846
Takayuki Mizutani

DATE: June 2, 1990

Via Express Mail
& Telecopier

Gentlemen, this memo is in response to your May 21, 1990 letter to me regarding the above matter.

The purpose of this memo is to request an extension of time on all deadlines referred to and/or set forth in your letter.

The reason for the request is that I've been out of town from May 10, 1990 to June 1, 1990 and I'm leaving town again on June 2, 1990 and will return to Hawaii on June 7, 1990.

The extension requested is for the maximum period of time which I understand to be twenty (20) days. If the extension is granted, it's my understanding that the response deadline will be June 28, 1990 instead of June 8, 1990.

I will ask my secretary to forward your letter with all attachments to our client for purposes of gathering documents and preparing answers to your questions.

Your cooperation and understanding is appreciated. Thank you.

2404357277 4

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

June 8, 1990

Mr. James Stone, Esq.
Fujiyama, Duffy, & Fujiyama
Suite 2700, Pauahi Tower
1001 Bishop Street
Honolulu, Hawaii 96813

RE: MUR 2892
Takayuki Mizutani

Dear Mr. Stone:

This is in response to your letter dated June 2, 1990, which we received on June 6, 1990, requesting an extension of twenty days to respond to the above captioned matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on June 28, 1990.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Jonathan Bernstein
Assistant General Counsel

9404357277 5

DOC 6466
RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUN -7 AM 10:27

TANIGAWA & TANIGAWA
Attorneys at Law
Suite 1530 Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813

Herbert H. Tanigawa
Michael K. Tanigawa

Telephone
(808) 521-8354
Fax
(808) 531-8263

June 4, 1990

Patty Reilly, Esq.
General Counsel's Office
Federal Election Commission
999 E.Street, NW
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN -7 AM 11:48

Re: MUR 2892
Japan Travel Bureau International, Inc.

Dear Ms. Reilly:

Enclosed is the response to interrogatories and request for production of documents. The listing of management personnel contained in Exhibit "A" is limited to managers in the Hawaii office. Japan Travel Bureau International, Inc. has offices in Los Angeles, San Francisco, Chicago, Atlanta, New Jersey, Newport Beach, and Seattle as well as the office in Hawaii. We were unable to compile a list of management personnel in all of the offices within the time provided for responding to the interrogatories. The management personnel in the other cities have no control over the decisions made in Hawaii and were not involved in any way in the making of campaign contributions in Hawaii.

If you require additional information in order to facilitate conciliation in this matter, please feel fre to contact me.

Sincerely,

Michael K. Tanigawa

MICHAEL K. TANIGAWA

encl.

2 4 0 4 3 5 7 2 7 7 6

RESPONSE TO INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS BY JAPAN TRAVEL BUREAU INTERNATIONAL, INC. IN MUR 2892

1. Japan Travel Bureau International, Inc.
2155 Kalakaua Avenue 9th Floor
Honolulu, Hawaii 96815

Japan Travel Bureau International, Inc. is in the business of providing travel and tour services.

Japan Travel Bureau International, Inc. is incorporated in the state of New York.

2. Please see Exhibit "A" attached hereto which is a listing of all of the officers of Japan Travel Bureau International, Inc. and the management personnel for the Hawaii office of Japan Travel Bureau International, Inc. If an immigrant or non-immigrant status is indicated under the heading of "Nationality", the nationality of that person is Japanese. The President, Mr. Shunichi Oyama is Japanese and he is in the United States on an E-1 status.

3. Please see Exhibit "A" attached hereto which is a listing of all of the officers of Japan Travel Bureau International, Inc. and the management personnel for the Hawaii office of Japan Travel Bureau International, Inc. If an immigrant or non-immigrant status is indicated under the heading of "Nationality", the nationality of that person is Japanese.

4. Japan Travel Bureau International, Inc. is a subsidiary of Japan Travel Bureau, Inc. 1-6-4 Marunouchi, Chiyoda-ku Tokyo, Japan.

5. Please see Exhibit "B" for a listing of contributions made to State election campaigns. No contributions were made to Federal election campaigns.

Refunds of contributions have been received from the following candidates:

Date of Refund	Source	Amount
05/31/89	Friends of Bertha Kawakami	$250.00
12/01/89	Friends of Clarice Hashimoto	$250.00
02/06/90	Friends of Bertha Kawakami	$250.00

6. Mr. Masao Hayashi, Mr. Milton Yanagawa and Mr. Kazutomi Suzuki. Mr. Yanagawa is identified in Exhibit "A" as the Director of Sales. At the time of the contributions, Mr. Hayashi was the General Manager in Hawaii. His address at that time was 4734 Farmers Road, Honolulu, Hawaii 96816. Mr. Hayashi's current address is Kaigai Ryoko-Honshanai Shiten, 1-6-4 Marunouchi, Chiyoda-ku, Tokyo, Japan 100. Mr. Hayashi's telephone number is (03) 284-7520. Mr. Hayashi's nationality is Japanese. Mr. Hayashi and Mr. Yanagawa

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determined who would receive the contributions. Mr. Suzuki prepared the checks.

7. The source of the funds used to make the contributions identified in the response to interrogatory #5 was income derived solely from the Hawaii operation of Japan Travel Bureau International, Inc. None of the funds were provided directly or indirectly by a foreign national except to the extent to which foreign nationals purchased services from Japan Travel Bureau International, Inc.

8. Japan Travel Bureau International, Inc. maintains a political action committee. The source of the funds used by the political action committee is income derived from the Hawaii operation of Japan Travel Bureau International, Inc. At the time of the contributions identified in response to interrogatory #5, Masao Hayashi and Milton Yanagawa were associated with the operation of the political action committee. Mr. Hayashi is identified in response #6. Mr. Yanagawa is identified in Exhibit "A". Mr. Kazutomi Suzuki was the treasurer of the committee. Mr. Suzuki is identified in Exhibit "A".

9. N/A

10. Mr. Kazutomi Suzuki
General Manager
BUS. 2155 Kalakaua Avenue 9th Floor
Honolulu, Hawaii 96815
RES. 2101 Nuuanu Avenue #1901
Honolulu, Hawaii 96817

Mr. Suzuki is the General Manager of Japan Travel Bureau International, Inc., Honolulu. He has been with Japan Travel Bureau International, Inc. since June 1985. Previously, Mr. Suzuki held the position of Assistant General Manager.

I declare under oath that the foregoing responses to interrogatories are true and correct to the best of my knowledge and belief.

DATED: Honolulu, Hawaii, June 4, 1990.

Kazutomi Suzuki
General Manager
Japan Travel Bureau International, Inc.

9 4 0 4 3 5 7 2 7 / 8

EXHIBIT "A"

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

1. JAPAN TRAVEL BUREAU INTERNATIONAL, INC.
   2155 Kalakaua Avenue 9th Floor
   Honolulu, HI 96815

   Incorporated in New York

2. OFFICERS:

PRESIDENT - Mr. Shunichi Oyama
BUSINESS ADDRESS: Equitable Tower 11th Floor
787 Seventh Avenue
New York, N.Y. 10019
Tel: (212)698-4955
RESIDENCE ADDRESS: 425 East 58th Street, Apt. 46-C
New York, N.Y. 10022
Tel: (212)752-5836
OCCUPATION: President
Japan Travel Bureau International, Inc.
NATIONALITY:

VICE PRESIDENT - Mr. Kenji Ito
BUSINESS ADDRESS: 2155 Kalakaua Avenue, 9th Floor
Honolulu, HI 96815
Tel: (808)922-0200
RESIDENCE ADDRESS: 1525 Wilder Avenue, Apt 206
Honolulu, HI 96822
Tel: (808)949-5770
OCCUPATION: Vice President
Japan Travel Bureau International, Inc.
President, JTB Overseas Development
NATIONALITY: E-1

- Mr. Rajime Kawamura
BUSINESS ADDRESS: First Interstate Tower
707 Wilshire Blvd., Suite 3800
Los Angeles, CA 90017
Tel: (213)687-9881
RESIDENCE ADDRESS: 1050 Don Pablo Dr.
Arcadia, CA 91006
Tel: (818)445-6765
OCCUPATION: Vice President
Japan Travel Bureau International, Inc.
General Manager, Los Angeles Office, JTBI
NATIONALITY: E-1

94043572719

- Mr. Koichi Fukuroe
BUSINESS ADDRESS: Equitable Tower 11th Floor
787 Seventh Avenue
New York, N.Y. 10019 Tel: (212)698-4955
RESIDENCE ADDRESS: 7 Bolton Gardens
Bronxville, N.Y. 100708
Tel: (914)793-3321
OCCUPATION: Vice President
Japan Travel Bureau International. Inc.
General Manager. TBI Wholesale Office, NY JTBI
NATIONALITY: E-1

TREASURER - Mr. Takato Ayabe
BUSINESS ADDRESS: Equitable Tower 11th Floor
787 Seventh Avenue
New York, N.Y. 10019
Tel: (212)698-4955
RESIDENCE ADDRESS: 9 North Lyle Avenue
Tenafly, N.J. 07670
Tel: (201)569-7104
OCCUPATION: Treasurer
Japan Travel Bureau International, Inc.
Comptroller, JTBI NY
NATIONALITY: E-1

SECRETARY - Mr. Carol Lyttle Jr.
BUSINESS ADDRESS: WHITMAN & RANSOM Tel: (212)351-3077
200 Park Ave.
New York, N.Y. 10166
RESIDENCE ADDRESS: 76 Nubel Lane
New Canaan, CT 06840
Tel: (203)972-0407
OCCUPATION:

NATIONALITY: U.S. CITIZEN

9404357278 0

3. MANAGEMENT PERSONNEL:

GENERAL MANAGER - Kazutomi Suzuki
BUSINESS ADDRESS: 2155 Kalakaua Avenue 9th Fl.
Honolulu, HI 96815
Tel: (808)922-0200
RESIDENCE ADDRESS: 2101 Nuuanu Avenue, #1901
Honolulu, HI 96817
Tel: (808)531-5672
OCCUPATION: General Manager, JTBI Honolulu
NATIONALTIY: E-1

ASSISTANT GENERAL MANAGER - Mitsuo Ikuta
BUSINESS ADDRESS: 2155 Kalakaua Avenue, 9th Fl.
Honolulu, HI 96815
Tel: (808)922-0200
RESIDENCE ADDRESS: 1251 Heulu St. #406
Honolulu, HI 96822
Tel: (808)526-3469
OCCUPATION: Assistant General Manager, JTBI Honolulu
NATIONALITY: E-1

- Akio Yano
BUSINESS ADDRESS: 2155 Kalakaua Avenue, 9th Fl.
Honolulu, HI 96815
Tel: (808)922-0200
RESIDENCE ADDRESS: 291 Puiwa Road
Honolulu, HI 96817
Tel: 595-8086
OCCUPATION: Assistant General Manager, JTBI HNL
NATIONALITY: Permanent Resident Alien

- Tsuneshige Hiroki
BUSINESS ADDRESS: 2155 Kalakaua Avenue 9th Fl.
Honolulu, HI 96815
Tel: (808)922-0200
RESIDENCE ADDRESS: 546 West Hind Drive
Honolulu, HI 96821
Tel: (808)373-4328
OCCUPATION: Assistant General Manager, JTBI HNL
NATIONALITY: E-1

- Takashi Sugi
BUSINESS ADDRESS: 2155 Kalakaua Avenue, 9th Fl.
Honolulu, HI 96815
Tel: (808)922-0200
RESIDENCE ADDRESS: 3138 Waialae Ave., #631
Honolulu, HI 96816
Tel: (808)734-5262
OCCUPATION: Assistant General Manager, JTBI HNL
NATIONALITY: E-1

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DIRECTOR OF SALES -

Milton Yanagawa
BUSINESS ADDRESS: 2155 Kalakaua Avenue 8th Fl.
Honolulu, HI 96815
Tel: (808)922-0200
RESIDENCE ADDRESS: 2100 Date St., #2305
Honolulu, HI 96826
Tel: (808)943-6918
OCCUPATION: Director of Sales, Outbound Tour Sales
NATIONALITY: U.S. Citizen

MANAGER -

Nelson Yoshimura
BUSINESS ADDRESS: 2155 Kalakaua Avenue 9th Fl.
Honolulu, HI 96815
Tel: (808)922-0200
RESIDENCE ADDRESS: 225 Nanua St.
Honolulu, HI 96821
Tel: (808)373-3421
OCCUPATION: Administration Manager, JTBI HNL
NATIONALITY: U.S. Citizen

- Toshihide Nakajima
BUSINESS ADDRESS: 2155 Kalakaua Avenue 9th Fl.
Honolulu, HI 96815
Tel: (808)922-0200
RESIDENCE ADDRESS: 3138 Waialae Ave. #1106
Honolulu, HI 96816
Tel: (808) 734-3262
OCCUPATION: Manager, Incoming Tours, JTBI HNL
NATIONALITY: E-1

- Akira Ogasawara
BUSINESS ADDRESS: 2155 Kalakaua Avenue 9th Fl.
Honolulu, HI 96815
Tel: (808)922-0200
RESIDENCE ADDRESS: 1515 Ward Avenue #1606
Honolulu, HI 96822
Tel: (808)537-9142
OCCUPATION: Manager, Purchasing, JTBI HNL
NATIONALITY: E-1

- Keiko Nishiza
BUSINESS ADDRESS: 2155 Kalakaua Ave., 9th Fl.
Honolulu, HI 96815
Tel: (808)922-0200
RESIDENCE ADDRESS: 2452 Tusitala St. #1007
Honolulu, HI 96815
Tel: (808)531-7837
OCCUPATION: Manager, Accounting, JTBI HNL
NATIONALITY: Permanent Resident Alien

9 4 0 4 3 5 7 2 7 8 2

Edward Nakanishi
BUSINESS ADDRESS: 2155 Kalakaua Ave., 8th Fl.
Honolulu, HI 96815
Tel: (808)922-0200
RESIDENCE ADDRESS: 1235 Aulepe Street
Kailua, HI 96734
Tel: 261-6348
OCCUPATION: Manager, Computer, JTBI HNL
NATIONALITY: U.S. Citizen

Sayoko Burgon
BUSINESS ADDRESS: 2155 Kalakaua Avenue 9th Fl.
Honolulu, HI 96815
Tel: (808)922-0200
RESIDENCE: 775 Kinalau Pl. #1004
Honolulu, HI 96813
Tel: (808)599-8791
OCCUPATION: Manager, Bill Check, JTBI HNL
NATIONALITY: Permanent Resident Alien

JoAnn Hamayasu
BUSINESS ADDRESS: 2155 Kalakaua Avenue 9th Fl.
Honolulu, HI 96815
Tel: (808)922-0200
RESIDENCE ADDRESS: 3201 Louin Street
Honolulu, HI 96822
Tel: (808)988-4621
OCCUPATION: Manager, Reservations, JTBI HNL
NATIONALITY: US Citizen

Kunitaka Furuhashi
BUSINESS ADDRESS: 2155 Kalakaua Avenue 9th Fl.
Honolulu, HI 96815
Tel: (808)922-0200
RESIDENCE ADDRESS: 920 Ward Avenue
Honolulu, HI 96814
Tel: 523-1279
OCCUPATION: Manager, Customer Service, JTBI HNL
NATIONALITY: Permanent Resident Alien

Hiroshi Sakae
BUSINESS ADDRESS: 2155 Kalakaua Avenue 9th Fl.
Honolulu, HI 96815
Tel: (808)922-0200
RESIDENCE ADDRESS: 734 B 10th Avenue
Honolulu, HI 96816
Tel: (808)734-5137
OCCUPATION: Manager, Customer Service, JTBI HNL
NATIONALITY: Permanent Resident Alien

9 4 0 4 3 5 7 2 7 8 3

Chigusa Imaoka
BUSINESS ADDRESS: 2155 Kalakaua Avenue 9th Fl.
Honolulu, HI 96815
Tel: (808)922-0200
RESIDENCE ADDRESS: 1425 Mamalu Street
Honolulu, HI 96817
Tel: (808)595-3026
OCCUPATION: Manager, Sales Planning & Promotion
JTBI HNL
NATIONALITY: Permanent Resident Alien

Shogen Meya
BUSINESS ADDRESS: 2155 Kalakaua Avenue 9th Fl.
Honolulu, HI 96815
Tel: (808)922-0200
RESIDENCE ADDRESS: 2916 Date St. #7-C
Honolulu, HI 96816
Tel: (808)935-5302
OCCUPATION: Manager, Incoming Tours, JTBI HNL
NATIONALITY: Permanent Resident Alien

William Sato
BUSINESS ADDRESS: 2155 Kalakaua Avenue 9th Fl.
Honolulu, HI 96815
Tel: (808)922-0200
RESIDENCE ADDRESS: 1667 Hoohaka St.
Pearl City, HI 96782
Tel: (808)455-9168
OCCUPATION: Manager, VIP Service, JTBI HNL
NATIONALITY: U.S. CITIZEN

Shigeki Tanaka
BUSINESS ADDRESS: 2155 Kalakaua Avenue 9th Fl.
Honolulu, HI 96815
Tel: (808)922-0200
RESIDENCE ADDRESS: 2104 Aluka Loop
Pearl City, HI 96782
Tel: (808)455-9208
OCCUPATION: Director of Sales, Customer Service
NATIONALITY: U.S. CITIZEN

Tatsuo Watanabe
BUSINESS ADDRESS: 2155 Kalakaua Avenue 9th Fl.
Honolulu, HI 96815
Tel: (808)922-0200
RESIDENCE ADDRESS: 98-858 Ainamui Loop
Aiea, HI 96701
Tel: (808)487-3525
OCCUPATION: Manager, Merchandising, JTBI HNL
NATIONALITY: Permanent Resident Alien

2404357278 4

Kenju Susuki
BUSINESS ADDRESS: P.O. Box 3103
Lihue, HI 96766
Tel: (808)245-9351
RESIDENCE ADDRESS: P.O. Box 143
Makaweli, Kauai, HI 96769
Tel: (808)337-9070
OCCUPATION: Manager, Kauai Office
NATIONALITY: Permanent Resident Alien

Eugene Shikuma
BUSINESS ADDRESS: 871 Kolu Street #102, 103
Wailuku, Maui, HI 96793
Tel: (808)242-6810
RESIDENCE ADDRESS: Kahana Manor #314
4310 Lower Honoapiilani Hwy.
Lahaina, Maui, HI 96761
Tel: (808)669-7047
OCCUPATION: Manager, Maui Office
NATIONALITY: US. CITIZEN

Mineko Takayama
BUSINESS ADDRESS: 2155 Kalakaua Avenue 8th Fl.
HOnolulu, HI 96815
Tel: (808)922-0200
RESIDENCE ADDRESS: 470 Keolu Drive
Kailua, HI 96734
Tel: (808)261-6532
OCCUPATION: Assistant Manager, Outbound
NATIONALITY: Permanent Resident Alien

9404357285

EXHIBIT "B"

DATE	RECIPIENT	AMOUNT
01/30/89	Friends of Dennis Nakasato	$250.00
01/30/89	Friends of Randy Iwase	$250.00
02/06/89	Mizuguchi for Senate Comm.	$500.00
02/13/89	Friends of Senator "Dick" Matsuura	$250.00
02/23/89	Friends of Romy Cachola	$250.00
03/06/89	Friends of Milton Holt	$1,000.00
03/17/89	Friends of Souki	$250.00
03/27/89	Friends of Bertha C. Kawakami	$250.00
03/30/89	Friends of Tony Chang	$25.00
03/31/89	Comm. to Re-Elect Carol Fukunaga	$50.00
04/06/89	Mizuguchi for Senate Comm. Golf Tourn.	$150.00
05/23/89	12th Ann. Sen. Norman Mizuguchi "Kolepa" Shoot-Out	$150.00
06/22/89	Romy Cachola Golf Tournament	$225.00
02/03/88	Friends of Dennis Nakasato	$250.00
02/05/88	Friends of Senator "Dick" Matsuura	$250.00
02/19/88	Friends of Romy Cachola	$250.00
03/01/88	Friends of Bertha C. Kawakami	$250.00
03/01/88	Friends of Whitney T. Andersen	$50.00
03/01/88	Friends of Randy Iwase	$100.00
03/03/88	Friends of Clarice Y. Hashimoto	$250.00
03/31/88	Friends of Milton Holt	$300.00
02/26/87	Friends of Dennis Nakasato	$225.00
02/27/87	Friends of Mary Jane McMurdo	$100.00
03/28/87	Friends of Tony Chang	$300.00
04/08/87	Time for Barbara Marumoto	$50.00
04/22/87	Friends to Re-Elect Seantor Yamasaki	$350.00
06/23/87	Friends of Tony Kunimura	$200.00
06/23/87	Senator Norman Mizoguchi Golf Tourn.	$90.00
08/25/87	Friends for Fasi	$2,000.00
03/24/86	Friends for Calvin Say	$150.00
03/26/86	Friends for Duke Kawasaki	$100.00
06/01/86	Friends of Kevin Kuroda	$200.00
06/10/86	Friends of Kevin Kuroda	$140.00
06/16/86	Friends of Eileen Anderson	$250.00
06/23/86	Citizens for Waihee	$10.00

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JTB

JAPAN TRAVEL BU[illegible]ional Inc

HONOLULU OFFICE
2270 KALAKAUA AVENUE 12TH FLOOR
HONOLULU HAWAII 96815-2563
TEL: (808) 922-0200
FAX: (808) 922-3473

CAMPAIGN SPENDING COMMISSION

'89 JUL 19 P1:28

RECEIVED

July 14, 1989

Campaign Spending Commission
Room 215
335 Merchant Street
Honolulu, Hawaii 96813

Gentlemen:

This is to inform you that JAPAN TRAVEL BUREAU INTERNATIONAL (PAC) has made political contributions during the period January 1, 1989 to June 30, 1989. Enclosed is a list of contributions made by our organization.

This statement is being submitted in lieu of a Supplemental Report as provided for in the Memorandum dated December 1, 1987 used by the Campaign Spending Commission.

Yours very truly,

JAPAN TRAVEL BUREAU INTERNATIONAL (PAC)

By _____
KAZUTOMI SUZUKI
Treasurer

KS:ctk

Enclosure

7 4 0 4 3 5 7 2 7 8 7

JTB

JAPAN TRAVEL BUREAU International Inc

HONOLULU OFFICE
2270 KALAKAUA AVENUE 12TH FLOOR
HONOLULU, HAWAII 96815-2563
TEL: (808) 922-0200
FAX: (808) 922-3473

July 11, 1989

REPORT OF CAMPAIGN PAYMENT

PRIOD: 1/01/89 - 6/30/89

1/30/89	FRIEND OF DENNIS NAKASATO 3010B PAPALI STREET HONOLULU, HI 96819	$250.00
1/30/89	FRIENDS OF RANDY IWASE 95-711 LEWANUU STREET MILILANI, HI 96789	250.00
2/06/89	MIZUGUCHI FOR SENATE COMMITTEE P.O. BOX 452 PEARL CITY, HI 96782	500.00
2/13/89	FRIENDS OF SENATOR "DICK" NATSUURA 1311 LAUNA STREET HILO, HI 96720	250.00
2/23/89	FRIENDS OF ROMY CACHOLA	250.00
3/06/89	FRIENDS OF MILTON HOLT	1,000.00
3/17/89	FRIENDS OF SOUKI	250.00
3/27/89	FRIENDS OF BERTHA C. KAWAKAMI 2422 AHUHU STREET PEARL CITY, HI 96782	250.00
3/30/89	FRIENDS OF TONY CHANG 2052 LEE PLACE HONOLULU, HI 96817	25.00
3/31/89	COMMITTEE TO RE-ELECT CAROL FUKUNAGA	50.00
4/06/89	MIZUGUCHI FOR SENATE COMMITTEE GOLF TOURNAMENT P.O. BOX 452 PEARL CITY, HI 96782	150.00

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JTB

JAPAN TRAVEL BU[illegible]ternational, Inc.

5/23/89	12th ANNUAL SENATOR NORMAN MIZUGUCHI "KOLEPA" SHOOT-OUT	150.00
6/22/89	ROMY CACHOLA GOLF TOURNAMENT 936 KALIHI STREET HONOLULU, HI 96819	225.00
	TOTAL	$3,600.00

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Japan Travel Bureau

2270 KALAKAUA AVENUE, 12TH FL., HONOLULU, HAWAII 96815-2553, (808) 922-0200, CABLE KOTSUKOSHA

CAMPAIGN SPENDING COMMISSION
JAN 26 1 14 PM '88
RECEIVED

January 25, 1988

Campaign Spending Commission
Room 215, 335 Merchant Street
Honolulu, Hawaii 96813

Gentlemen:

This is to inform you that JAPAN TRAVEL BUREAU INTERNATIONAL (PAC) has made the following political contribution during the period July 1, 1987 to December 31, 1987:

8/25/87 FRIENDS FOR FASI $2,000.00
Suite 203, 100 North Beretania Street
Honolulu, Hawaii 96817

This statement is being submitted in lieu of a Supplemental Report as provided for in the Memorandum dated December 1, 1987 from the Campaign Spending Commission.

Yours very truly,

JAPAN TRAVEL BUREAU INTERNATIONAL
(PAC)

By
KAZUTOMI SUZUKI
Treasurer

9 4 0 4 3 5 7 2 7 9 0

HERBERT H. TANIGAWA
ATTORNEY AT LAW
Suite 1350 Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813

Area code (808)

Telephone 521-8354

CAMPAIGN SPENDING COMMISSION
SEP 29 2 08 PM '86
RECEIVED

September 25, 1986

Campaign Spending Commission
Room 215, 335 Merchant Street
Honolulu, Hawaii 96813

Re: JAPAN TRAVEL BUREAU INTERNATIONAL (PAC)/
Post Primary Report

Gentlemen:

This is to inform you that Japan Travel Bureau International (PAC) has not made any political contributions or donations to any candidate or political party during the period September 6, 1986 through September 20, 1986.

This statement is being submitted on behalf of Japan Travel Bureau International (PAC) in lieu of a Post Primary Report.

Yours very truly,

Herbert Tanigawa

HERBERT H. TANIGAWA
Attorney for JAPAN TRAVEL BUREAU
INTERNATIONAL (PAC)

HHT:eh

cc: Mr. Kazutomi Suzuki

9404357279 1

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

ELECTION YEAR

DISCLOSURE REPORT
FOR COMMITTEES OTHER THAN CANDIDATES' COMMITTEE

CAMPAIGN SPENDING COMMISSION
Jul 23 10 52 AM '86
RECEIVED

This Report Covers The Period From 1/1/86 (Date) thru 6/30/86 (Date)

SECTION A

NAME AND MAILING ADDRESS OF COMMITTEE OR PARTY
(Must be same as appearing on organizational report)

NAME Japan Travel Bureau International (PAC)

ADDRESS Suite 1201, 2270 Kalakaua Avenue

CITY STATE Honolulu, Hawaii 96815

BUS 922-0200 (Treasurer's Telephone) RES

THIS REPORT IS A: (Check Appropriate Boxes)

- ☐ Pre Primary Report
- ☐ Pre General Report
- ☐ Post Primary Report
- ☐ Post General Report
- ☒ Supplemental Report
- ☐ Amended Report
- ☐ Final Termination Report (Balance Must be Reduced to Zero)
- ☐ Other

SECTION B

SUMMARY OF RECEIPTS AND EXPENDITURES
(Fill Out Sections C, D & E Before Section B)

RECEIPTS	THIS PERIOD	EXPENDITURES	THIS PERIOD
1. Cash Receipts of $100 or Less	110.00	8. Total Contributions to Candidates and Other Expenditures (Sec. E Line 18)	850.00
2. Non-Monetary Receipts of $100 or Less		9. Total Cumulative Expenditures From Prior Period (Sec. B Line 10 of Prior Report)	6,275.00
3. Receipts Aggregating Over $100 (Sec. C Line 15)	760.00	10. Total Cumulative Expenditures to Date (Line 8 Plus Line 9)	7,125.00
4. Other Receipts (Sec. D Line 18)			
5. Total Receipts This Period (Add Lines 1 Thru 4)	850.00	11. SURPLUS (If Line 7 Minus Line 10 is Positive)	-0-
6. Total Cumulative Receipts From Prior Report (Sec. B Line 7 of Prior Report)	6,275.00	12. DEFICIT (If Line 7 Minus Line 10 is Negative)	-0-
7. Total Cumulative Receipts to Date (Line 5 Plus 6)	7,125.00	CASH BALANCE as of July 15, 1986	-0-

SECTION C

SOURCE OF AGGREGATE RECEIPTS OVER $100

DATE RECEIVED	NAME AND ADDRESS OF DONOR OR SOURCE OF RECEIPT	OCCUPATION OF DONOR	AMOUNT OF THIS CASH RECEIPT	VALUE OF THIS NON-MONETARY RECEIPT	TOTAL AMOUNT
3/24/86	Japan Travel Bureau International, Inc. Suite 1201, 2270 Kalakaua Avenue Honolulu, Hawaii 96815		150.00		150.00
3/26/86	" "		100.00		100.00
6/1/86	" "		200.00		200.00
6/10/86	" "		140.00		140.00
6/16/86	" "		250.00		250.00
6/23/86	" "		10.00		10.00

13. TOTAL AGGREGATE RECEIPTS OVER $100 THIS PAGE 850.00
14. TOTAL AGGREGATE RECEIPTS OVER $100 FROM SUPPORTING SCHEDULE
15. TOTAL AGGREGATE RECEIPTS OVER $100 THIS PERIOD (Line 13 plus Line 14) 850.00

9404357279 2

ECTION D OTHER RECEIPT (Interest, Reimbursements, Canceled Checks, etc.)

DATE	SOURCE	ADDRESS	DESCRIPTION	AMOUNT

6 TOTAL OTHER RECEIPTS THIS PERIOD ..... $ _____

ECTION E CONTRIBUTIONS MADE TO CANDIDATES AND OTHER EXPENDITURES

CONTRIBUTION or INVOICE DATE	RECIPIENT'S NAME AND ADDRESS or VENDOR'S NAME AND ADDRESS	PURPOSE AND DESCRIPTION	AMOUNT	✓ if CONTRIBUTION TO CANDIDATE
3/24/86	Friends for Calvin Say 10th Avenue Honolulu, Hawaii 96816	Fundraiser	150.00	
3/26/86	Friends of Duke Kawasaki Suite C, 1240 Waimanu Street Honolulu, Hawaii 96814	Fundraiser	100.00	
6/1/86	Friends of Kevin Kuroda P.O. Box 805 Pearl City, Hawaii 96782	Donation	200.00	X
6/10/86	Friends of Kevin Kuroda P.O. Box 805 Pearl City, Hawaii 96782	Fundraiser	140.00	
6/16/86	Friends of Eileen R. Anderson 2255 No. School Street Honolulu, Hawaii 96819	Fundraiser	250.00	
6/23/86	Citizens for Waihee 565 Kokea Street Honolulu, Hawaii 96817	Fundraiser	10.00	

7 TOTAL CONTRIBUTIONS MADE TO CANDIDATES AND INVOICES PAID THIS PAGE 850.00
8 TOTAL CONTRIBUTIONS MADE TO CANDIDATES AND INVOICES PAID FROM SUPPORTING SCHEDULE ..... _____
9 TOTAL CONTRIBUTIONS MADE TO CANDIDATES AND INVOICES PAID THIS PERIOD (Line 17 plus Line 18) 850.00

Certification: I hereby certify that the above and all attached Schedules are complete, correct and true statements to the best of my knowledge.

Signature of Treasurer KAZUTOKI SUZUKI 7/15/86 Date

2404357279 3

HERBERT H. TANIGAWA
ATTORNEY AT LAW
Suite 1550 Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813

Area code (808)

Telephone 521-8354

January 5, 1987

Campaign Spending Commission
Room 215, 335 Merchant Street
Honolulu, Hawaii 96813

Re: JAPAN TRAVEL BUREAU INTERNATIONAL (PAC)/
Supplemental Report

Gentlemen:

This is to inform you that Japan Travel Bureau International (PAC) has not made any political contributions or donations to any candidate or political party during the period November 5, 1986 through December 31, 1986.

This statement is being submitted on behalf of Japan Travel Bureau International (PAC) in lieu of a Supplemental Report for the above mentioned period.

Yours very truly,

HERBERT H. TANIGAWA
Attorney for JAPAN TRAVEL BUREAU
INTERNATIONAL (PAC)

HHT:eh

cc: Mr. Kazutomi Suzuki

9404357279 4

FILE COPY

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

ELECTION YEAR _____

DISCLOSURE REPORT
FOR COMMITTEES OTHER THAN CANDIDATES' COMMITTEE

CAMPAIGN SPENDING COMMISSION
Jul 24 1 52 PM '87
RECEIVED

This Report Covers The Period From 1/1/87 (Date) thru 6/30/87 (Date)

SECTION A

NAME AND MAILING ADDRESS OF COMMITTEE OR PARTY
(Must be same as appearing on organizational report)

NAME Japan Travel Bureau International (PAC)
ADDRESS Suite 1201, 2270 Kalakaua Avenue
CITY STATE Honolulu, Hawaii 96815
BUS 922-0200 (Treasurer's Telephone) RES _____

THIS REPORT IS A: (Check Appropriate Boxes)

- ☐ Pre Primary Report
- ☐ Pre General Report
- ☐ Post Primary Report
- ☐ Post General Report
- ☒ Supplemental Report
- ☐ Amended Report
- ☐ Final Termination Report (Balance Must be Reduced to Zero)
- ☐ Other _____

SECTION B SUMMARY OF RECEIPTS AND EXPENDITURES
(Fill Out Sections C, D & E Before Section B)

RECEIPTS	THIS PERIOD
1 Cash Receipts of $100 or Less	140.00
2 Non-Monetary Receipts of $100 or Less	
3 Receipts Aggregating Over $100 (Sec. C Line 15)	7,175.00
4 Other Receipts (Sec. D Line 10)	
5 Total Receipts This Period (Add Lines 1 Thru 4)	7,315.00
6 Total Cumulative Receipts From Prior Report (Sec. B Line 7 of Prior Report)	7,175.00
7 Total Cumulative Receipts to Date (Add 5 Plus 6)	8,490.00

EXPENDITURES	THIS PERIOD
8 Total Contributions to Recipients and Other Expenditures (Sec. E Line 18)	1,315.00
9 Total Cumulative Expenditures From Prior Period (Sec. B Line 10 of Prior Report)	7,175.00
10 Total Cumulative Expenditures to Date (Add 8 Plus Line 9)	8,490.00
11 SURPLUS (If Line 7 Minus Line 10 is Positive)	-0-
12 DEFICIT (If Line 7 Minus Line 10 is Negative)	-0-
CASH BALANCE AS OF July 10, 1987	-0-

SECTION C SOURCE OF AGGREGATE RECEIPTS OVER $100

DATE RECEIVED	NAME AND ADDRESS OF DONOR OR SOURCE OF RECEIPT	OCCUPATION (If Individual)	AMOUNT OF THIS CASH RECEIPT	VALUE OF THIS NON-MONETARY RECEIPT	TOTAL RECEIPT
2/26/87	Japan Travel Bureau International, Inc. Suite 1201, 2270 Kalakaua Avenue Honolulu, Hawaii 96815		225.00		225.00
2/27/87	" "		100.00		100.00
3/28/87	" "		300.00		300.00
4/ 8/87	" "		50.00		50.00
4/22/87	" "		350.00		350.00
6/23/87	" "		200.00		200.00
6/23/87	" "		90.00		90.00

13 TOTAL AGGREGATE RECEIPTS OVER $100 THIS PAGE 1,315.00
14 TOTAL AGGREGATE RECEIPTS OVER $100 FROM SUPPORTING SCHEDULE .....
15 TOTAL AGGREGATE RECEIPTS OVER $100 THIS PERIOD (Line 13 plus Line 14) 1,315.00

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SECTION D — OTHER RECEIPTS (Interest, Reimbursements, Canceled Chks, etc.)

DATE	SOURCE	ADDRESS	DESCRIPTION	AMOUNT

16 TOTAL OTHER RECEIPTS THIS PERIOD

SECTION E — CONTRIBUTIONS MADE TO CANDIDATES AND OTHER EXPENDITURES

CONTRIBUTION or INVOICE DATE	RECIPIENT'S NAME AND ADDRESS or VENDOR'S NAME AND ADDRESS	PURPOSE AND DESCRIPTION	AMOUNT	✓ if CONTRIBUTION TO CANDIDATE
2/26/87	Friends of Dennis Nakasato 3010-B Papali Street Honolulu, Hawaii 96815	Fundraiser	225.00	
3/27/87	Friends of Mary Jane Nishida Room 204, State Capitol Honolulu, Hawaii	Fundraiser	100.00	
3/28/87	Friends of Tony Chang 2152 Lee Place Honolulu, Hawaii 96817	Fundraiser	300.00	
4/ 8/87	Time for Barbara Marumoto 1438 Ihilee Loop Honolulu, Hawaii 96821	Fundraiser	50.00	
4/22/87	Friends to Re-Elect Senator Yamasaki Suite 383, 1946 Young Street Honolulu, Hawaii 96826	Fundraiser	350.00	
6/23/87	Friends of Tony Kunimura c/o N. Ramones P.O. Box 588, Kapaa, Hawaii 96746	Fundraiser	200.00	
8/23/87	Senator Norman Mizuguchi Golf Tournament P.O. Box 452 Pearl City, Hawaii 96782	Contribution	90.00	

17 TOTAL CONTRIBUTIONS MADE TO CANDIDATES AND INVOICES PAID THIS PAGE — 1,315.00
18 TOTAL CONTRIBUTIONS MADE TO CANDIDATES AND INVOICES PAID FROM SUPPORTING SCHEDULE — 1,315.00
19 TOTAL CONTRIBUTIONS MADE TO CANDIDATES AND INVOICES PAID THIS PERIOD (Line 17 plus Line 18) — 1,315.00

I declare under penalty of perjury that the above and all attached Schedules are complete, correct and true statements to the best of my knowledge.

Signature — 7/26/87 Date

9404357279 6

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

ELECTION YEAR
1986

ORGANIZATIONAL REPORT
FOR COMMITTEES OTHER THAN CANDIDATE'S COMMITTEE

CAMPAIGN SPENDING COMMISSION
AUG 20 1 34 PM '86

PLEASE TYPE OR PRINT CLEARLY WITH BLACK INK

COMMITTEE NAME JAPAN TRAVEL BUREAU INTERNATIONAL (PAC)

ADDRESS Suite 1201, 2270 Kalakaua Avenue

CITY STATE Honolulu, Hawaii 96815

Japan Travel Bureau International, Inc.
NAME OF SPONSORING ORGANIZATION OF COMMITTEE

IMPORTANT: All notices and commission correspondence will be sent to the above address. If you move or change address notify the commission in writing immediately.

THIS REPORT IS FILED FOR THE FOLLOWING PURPOSE(S) (Check Appropriate Boxes)

- ☐ Registration of New Committee
- ☒ Continuing Committee Re-registering for a New Election Year
- ☐ Receipt of contributions aggregating more than $100
- ☐ Amended report
- ☐ A list of donors who have contributed an aggregate amount of more than $100 each since the last election is attached (Disclosure Report)

BALLOT ISSUE OR QUESTION SUPPORTING OR OPPOSING

CANDIDATE SUPPORT

☐ Single Candidate
☒ Multi Candidate

OFFICERS OF COMMITTEE OR PARTY

Committee Chairman: Masao Hayashi
Address: Suite 1201, 2270 Kalakaua Avenue
City, State: Honolulu, Hawaii 96815
Telephone: 922-0220 (Bus) (Res)

Treasurer: Kazutomi Suzuki
Address: Suite 1201, 2270 Kalakaua Avenue
City, State: Honolulu, Hawaii 96815
Telephone: 922-0220 (Bus) (Res)

Deputy Chairman:
Address:
City, State:
Telephone: (Bus) (Res)

Deputy Treasurer:
Address:
City, State:
Telephone: (Bus) (Res)

COMMITTEE DEPOSITORIES (Financial Institutions, Safe-deposit Boxes, etc.)

Depository Name	Branch	Account/Box Number	Checking	Savings	Safe Deposit Box	Other
Central Pacific Bank	Waikiki	06-02469-5	X			

Certification: I hereby certify that the above and all attached statements are true, correct and complete to the best of my knowledge.

Signature

Treasurer

9404357279 7

00C6464

SATTERLEE STEPHENS BURKE & BURKE
230 PARK AVENUE
NEW YORK, N. Y. 10169-0079
(212) 818-9200

47 MAPLE STREET
SUMMIT, N.J. 07901
(201) 277-2221

TELEX NO. 233437
CABLE "SATERFIELD" NEW YORK
TELECOPIER (212) 818-9606, 9607

June 6, 1990

VIA FEDERAL EXPRESS

Ms. Patty Reilly
c/o Michael Choy
Office of General Counsel
Federal Election Commission
Room 657
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2892
ICBC ("International Commercial Bank of China")

Dear Ms. Reilly:

Enclosed are copies of ICBC's response to the interrogatories sent by the Federal Election Commission.

I will be out from office from June 11th through June 22, 1990. If you have any questions, please do not hesitate to contact Mr. William M. Jackson of our New York office.

Very truly yours,

Gregory Chiang

Gregory Chiang

GC:se
Enclosures

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN -7 AM 11:47

HAND DELIVERED

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUN -7 AM 10:36

9404357279 8

1. This bank had not donated any money to any state or local political committee in Hawaii.
2. This bank does not have any subsidiaries located in Hawaii.
3. Our ranking officers and directors assured us that they had not donated any money in the name of our bank to any political campaign run by May. Frank Fasi.

The names and addresses of our ranking officers and directors are as follows:

Title (from 1987.9 to 1990.6)	Name	Address	Tel.	Nationality	United States citizen or permanent resident of U.S.A.
Chairman of the Board & Chief Executive Officer	C. D. Wang	No. 100, Chi Lin Rd., Taipei	563-3156	Chinese	No
President	Theodore S.S. Cheng	"	"	"	"
Executive Vice President	Howard L. Chang (1987.9-1990.1)	"	"	"	"
	Sung-Yuen Chu	"	"	"	"
	James T.T. Yuan (1990.2-)	"	"	"	"
VP & Chief Secretary	Kang-Ya Wang (1987.9-1990.2)	"	"	"	"
	Hsiaw-Huey Hsieh (1990.3-)	"	"	"	"
Managing Director	Theodore S.S. Cheng	"	"	"	"
	Frank C. Chen	"	"	"	"
	Chin-Chow Chu	"	"	"	"
	Shin-Chuan Mao	"	"	"	"
Director of the Board	K. H. King	"	"	"	"
	Tsung-To Way	"	"	"	Yes
	Tze-Chi Chao	"	"	"	No
	C. F. Koo	"	"	"	"

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Title (from 1987.9 to 1990.6)	Name	Address	Tel.	Nationality	United States citzen or permanent resident of U.S.A.
Director of the Board	M. P. Chen	No. 100 Chi-Lin Rd., Taipei	563-3156	Chinese	No.
	Chin-Ten Hsu	"	"	"	"
	Y. Z. Hsu	"	"	"	"
	Kuo-Jen Lin	"	"	"	"
	Cheng-Chung Yao	"	"	"	"
	L. C. Tsao	"	"	"	"
	Yen Chang	"	"	"	"

9 4 0 4 3 5 7 2 8 0 0

職稱	中文姓名	英文姓名	擔任職務起迄日期	備註
董事長	王志道	C. D. Wang	1987.9-1990.6	
總經理	鄭志松	Theodore S.S. Cheng	1987.9-1990.6	
副總經理	張學林	Howard L. Chang	1987.9-1990.1	
〃	朱森元	Sung-Yuen Chu	1987.9-1990.6	
〃	袁德泰	James T.T. Yuan	1990.2-1990.6	
秘書處處長	王光亞	Kang-Ya Wang	1987.9-1990.2	
	謝孝惠	Hsiaw-Huey Hsieh	1990.3	

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職稱	中文姓名	英文姓名	擔任職務起迄日期	備註
董事長	王志道	C. D. Wang	1987.9-1990.6	
常務董事	鄭世松	Theodore S.S. Cheng	1987.9-1990.6	
〃	陳啓川	Frank C. Chen	1987.9-1989.3.15	解任
〃	瞿荊洲	Chin-Chow Chu	1987.9-1990.6	
〃	毛信泉	Shin-Chuan Mao	1987.9-1990.6	
董事	金克和	K. H. King	1987.9-1990.6	
〃	魏宗鐸	Tsung-To Way	1987.9-1989.3.15	解任
〃	趙自齊	Tze-Chi Chao	1987.9-1988.11.9	由張殿先生接替
〃	辜振甫	C. F. Koo	1987.9-1990.6	
〃	許金德	Chin-Ten Hsu	1987.9-1989.3.15	解任
〃	陳茂榜	M. P. Chen	1987.9-1989.3.15	解任
〃	徐有庠	Y. Z. Hsu	1987.9-1990.6	
〃	林國人	Kuo-Jen Lin	1987.9-1990.6	
〃	姚正中	Cheng-Chung Yao	1987.9-1990.6	
〃	曹立巘	L. C. Tsao	1987.9-1990.6	
〃	張殿	Yen Chang	1988.11.9-1990.6	

9 4 0 4 3 5 7 2 8 0 2

00C 6457

KOBAYASHI, WATANABE, SUGITA, KAWABIMA & GODA
ATTORNEYS AT LAW
HAWAII TOWER, 8th FLOOR
745 FORT STREET
HONOLULU, HAWAII 96813-3999
TELEPHONE (808) 544-8300

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUN -6 PM 12:20

Kevin S.C. Chang*
Kelly Fujikawa*
Alan M. Goda*
Lyle Y. Hanada*
J. Douglas Ing*
Cheryl K. Kabasa*
Jonathan Kawabima*
Bert T. Kobayashi, Jr.*
John T. Komeiji*
Wesley H. Kondo*
Benjamin A. Kudo*
Dale W. Lee*
Ronald Y. K. Leong*
Michael A. Lorusso*
Lee R. Smith*
Kenneth Y. Sugita*
Robert T. Takemoto*
Jeffrey N. Watanabe*
Cynthia Winegar*
Randall Y. Yamamoto*
*A Law Corporation

Jon M. L. Y. Aase
George B. Apter
Ferdinand G. Arenas
Wendell H. Fuji
Charles W. Gall
Rosanne K. Goo
Lyle S. Hosoda
Robert K. Ishihara
Donna Y. Kanemaru
Pamela J. Larson
Alan K. Maeda
David L. McKinty
Janeen A. Olds
Fred Troncone

OF COUNSEL:
George R. Ariyoshi
Bert T. Kobayashi, Sr
Russell K. Kono
Facsimile: (808) 544-8399
Telex: 8002398585 MCI
MCI Mail: 2398585
ABA/Net: ABA2281

June 3, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUN -6 PM 12:20

BY DHL COURIER

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Attention: Michael Tory

Re: MUR 2892
Ohbayashi Hawaii Corp.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN -6 PM 4:49

Dear Mr. Tory:

This letter follows our May 31 telephone conversation and responds to Ms. Elliott's May 21, 1990 correspondence regarding the above-referenced matter.

Pursuant to 11 CFR 111.18(d), Ohbayashi Hawaii Corp. ("Ohbayashi") requests that the Federal Election Commission enter into negotiations for the purpose of achieving pre-probable cause conciliation.

In anticipation of the negotiations for pre-probable cause concilitation, we submit the following information for consideration by the Commission.

First, there was no willful or deliberate intent on the part of Ohbayashi to violate the Federal Election Campaign Act of 1971 ("Act"). Ohbayashi made the political contributions which are the subject of the above-referenced consolidated cases at the recommendation of its consultant, Norman Quon. (See: July 14, 1989 letter to Patty Reilly and supporting Affidavit of Toshiharu Hino submitted in MUR 2892; and December 27, 1989 letter to Lois Lerner and supporting Affidavit of Toshiharu Hino submitted in MUR 3004). Ohbayashi made the subject political contributions at the urging and based upon advice provided by its

9404357280 3

consultant. Any violation of the Act by Ohbayashi was inadvertant and unintentional.

Second, Ohbayashi's total contributions in MUR 2892 and MUR 3004 totaled $4,000. The amounts were not extraordinary.

Specifically, Ohbayashi made political contributions as follows:

1) Friends For Fasi in the amount of $1,000 on September 12, 1988;

2) Friends For Fasi in the amount of $1,000 on August 24, 1987; and

3) Citizens for John D. Waihee in the amount of $2,000 on September 23, 1988.

Based on the foregoing, we feel that pre-probable cause concilation is appropriate in the above-referenced case.

In order to minimize costs and fees, Ohbayashi will not submit answers to interrogatories or a response to request for production of documents unless we hear otherwise from you.

Yhank you for your courtesy and consideration in this matter. Please contact the undersigned if you have any questions or require additional information.

Very truly yours,

KEVIN S.C. CHANG
for
KOBAYASHI, WATANABE,
SUGITA, KAWASHIMA & GODA

KSCC:me

cc: Ohbayashi Hawaii Corporation

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HAND DELIVERED

RECEIVED FEDERAL ELECTION COMMISSION MAIL ROOM

OGC 6465

'90 JUN -7 AM 10:20

GRAHAM & JAMES

ONE MARITIME PLAZA

THIRD FLOOR

SAN FRANCISCO, CALIFORNIA 94111

TELEPHONE (415) 954-0200

OTHER OFFICES
LOS ANGELES, CA
LONG BEACH, CA
NEWPORT BEACH, CA
PALO ALTO, CA
NEW YORK, NY
WASHINGTON, DC
RALEIGH, NC
MILAN
HONG KONG
BEIJING
TOKYO

AFFILIATED OFFICE
KUWAIT

TELEX
40143 CHALGRAY SFO
M. C. I. 67565 GJ SFO

FACSIMILE
(415) 391-8493
(415) 391-5906

CABLE
CHALGRAY, SAN FRANCISCO, CA

WRITER'S DIRECT DIAL NUMBER

(415) 954-0220

RECEIVED FEDERAL ELECTION COMMISSION OFFICE OF GENERAL COUNSEL

'90 JUN -7 AM 11:47

June 6, 1990

BY FEDERAL EXPRESS

Patty Reilly, Esq.
Michael Troy, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: American Hawaii Cruises, Inc.
MUR 2892
Our File: AHC 1.1

Dear Ms. Reilly and Mr. Troy:

We received your letter dated May 21, 1990, the Interrogatories and Request for Production of Documents, and the Commission's Factual and Legal Analysis on May 29, 1990. Because the undersigned, counsel for American Hawaii Cruises, Inc. in this matter, is presently at trial on a matter pending in the San Francisco Superior Court and anticipates that such trial will probably not be concluded until June 16, 1990, American Hawaii Cruises respectfully requests a 30-day extension from June 13 to and including July 13, 1990 within which to respond to the interrogatories, produce the requested documents, and submit any factual and legal matters relevant to the referenced matter. We would appreciate hearing from you at your earliest convenience.

Thank you for your time and consideration.

Very truly yours,

Sam D. Delich/fl

Sam D. Delich
of
GRAHAM & JAMES

SDD:FL:jps

FLOBX.P50

9404357280 5

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

June 8, 1990

Mr. Sam D. Delich
Graham & James
One Maritime Plaza
Third Floor
San Francisco, CA 94111

RE: MUR 2892
American Hawaii Cruises, Inc.

Dear Mr. Delich:

This is in response to your letter dated June 6, 1990, which we received on June 7, 1990, requesting an extension of thirty days to respond to the above-captioned matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on July 13, 1990.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Jonathan Bernstein

BY: Jonathan Bernstein
Assistant General Counsel

9404357280 6

06C 6462

OKUMURA TAKUSHI FUNAKI & WEE
ATTORNEYS AT LAW
A LAW CORPORATION

SUYEKI OKUMURA
ROY E. TAKUSHI
JAMES T. FUNAKI
JOSEPH K. WEE

SHUICHI MIYASAKI
ALFRED M. K. WONG
ROBERT M. EHRHORN, JR.
DICKSON C. H. LEE

PETER T. STONE
JAMES N. H. YEE
AARON S. H. YOO

SUITE 1400
GROSVENOR CENTER
733 BISHOP STREET
HONOLULU, HAWAII 96813

TELEPHONE (808) 543-9800
FACSIMILE (808) 599-1060

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUN -7 AM 10:36

June 1, 1990

Federal Election Commission
Washington, D.C. 20463

Attention: Lawrence M. Noble
General Counsel

RE: MUR 2892
Matsuzato Hawaii, Inc.
dba Queen Kapiolani Hotel

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN -7 AM 11:47

Dear Sir:

This letter refers to the letter dated May 21, 1990 from the Federal Election Commission ("FEC") regarding the above named company which our office received on May 26, 1990.

On behalf of the above-named client, the FEC is requested to grant an extension of time to June 20, 1990 to answer the Interrogatories.

Very truly yours,

OKUMURA TAKUSHI FUNAKI & WEE
ATTORNEYS AT LAW
A LAW CORPORATION

By
Dickson C. H. Lee

DCHL:en

5015V

24435723807

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 8, 1990

Mr. Dickson C. H. Lee
Okumura, Takushi, Funaki, & Wee
Suite 1400 Grosvenor Center
733 Bishop Street
Honolulu, Hawaii 96813

RE: MUR 2892
Matsuzato Hawaii, Inc.
dba Queen Kapiolani Hotel

Dear Mr. Lee:

This is in response to your letter dated June 1, 1990, which we received on June 7, 1990, requesting an extension of ten days to respond to the above-captioned matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on June 10, 1990.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Jonathan Bernstein
Assistant General Counsel

9404357228 08

OKUMURA TAKUSHI FUNAKI & WEE
ATTORNEYS AT LAW
A LAW CORPORATION

SUYEKI OKUMURA
ROY E. TAKUSHI
JAMES T. FUNAKI
JOSEPH K. WEE

SHUICHI MIYASAKI
ALFRED M. K. WONG
ROBERT M. EHRHORN, JR.
DICKSON C. H. LEE

PETER T. STONE
JAMES N. H. YEE
AARON S. H. YOO

SUITE 1400
GROSVENOR CENTER
733 BISHOP STREET
HONOLULU, HAWAII 96813

TELEPHONE (808) 543-9800
FACSIMILE (808) 599-1960

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUN -7 AM 10:36

June 1, 1990

Federal Election Commission
Washington, D.C. 20463

Attention: Lawrence M. Noble
General Counsel

RE: MUR 2892
Universal Express Co. (Hawaii), Ltd.
dba The Park Shore Hotel

Dear Sir:

This letter refers to the letter dated May 21, 1990 from the Federal Election Commission ("FEC") regarding the above named company which our office received on May 26, 1990.

On behalf of the above-named client, the FEC is requested to grant an extension of time to June 20, 1990 to answer the Interrogatories.

Very truly yours,

OKUMURA TAKUSHI FUNAKI & WEE
ATTORNEYS AT LAW
A LAW CORPORATION

By _____
Dickson C. H. Lee

DCHL:en

5015V

24043572809

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 13, 1990

Mr. Dickson C. H. Lee
Okumura, Takushi, Funaki, & Wee
Suite 1400 Grosvenor Center
733 Bishop Street
Honolulu, Hawaii 96813

RE: MUR 2892
Matsuzato Hawaii, Inc.
Universal Express Co.
Hawaii), Ltd.

Dear Mr. Lee:

This is in response to your letters dated June 1, 1990, which we received on June 7, 1990, requesting an extension until June 20, 1990 to respond to the above-captioned matter. After considering the circumstances presented in your letters, I have granted the requested extension. Accordingly, your responses are due by the close of business on June 20, 1990.

Due to an administrative oversight, you were sent a letter on June 8, 1990 granting an extension until June 10, 1990 for Matsuzato Hawaii, Inc. This letter confirms that the response from Matsuzato Hawaii, Inc. may be submitted on or before June 20, 1990, as you requested.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Jonathan Bernstein
Assistant General Counsel

9404357281 0

HONOLULU OFFICE
(808) 524-1212
Suite 1300, Pacific Tower
1001 Bishop Street
Post Office Box 4436
Honolulu, Hawaii 96813-4436
Cable: PACIFICLAW
Telex: PACLAW 634377
FAX: (808) 526-4591
FAX: (808) 528-1654

MAUI OFFICE
(808) 242-8644
101 H.G.E.A. Building
2145 Kaohu Street
Post Office Box 870
Wailuku, Hawaii 96793-0870
FAX: (808) 244-9775

PAUL, JOHNSON, ALSTON & HUNT

ATTORNEYS AT LAW A LAW CORPORATION

June 5, 1990

VIA FAX AND U.S. MAIL

Patty Reilly, Esq.
Staff Attorney
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Re: Tetsuo and Yasuo Yasuda, MUR 2892

Dear Ms. Reilly:

As you know, we represent Tetsuo and Yasuo Yasuda in the above-entitled matter before the Federal Election Commission. We have received Ms. Elliott's letter dated May 21, 1990 advising us of, inter alia, the deadline for our response to the charges that have been made against Messrs. Yasuda and the need for a written request for an extension of time, should an extension be necessary.

Because Messrs. Yasuda reside in Japan and speak very little English (thereby making direct communication with them difficult), we request a twenty (20) day extension of the deadline to respond to Ms. Elliott's May 21, 1990 letter.

If you have any questions about our request for an extension of time, please contact Paul Alston or me.

Very truly yours,

Robyn D. Chun

ROBYN D. CHUN

RBC:lhc:1420N
cc: clients

HONOLULU James T. Paul, David A. Johnson, Gary Y. S. Park, Shelby Anne Floyd, Chad Takiguchi, Ellen Godbey Carson, Elizabeth Kent, Mel Nakamoto, MAUI Dennis Niles, William M. McKeon

9 4 0 4 3 5 7 2 8 1 1

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

June 8, 1990

Ms. Robyn D. Chun
Paul, Johnson, Alston, & Hunt
Suite 1300, Pacific Tower
1001 Bishop Street
Post Office Box 4433
Honolulu, Hawaii 96812-4438

RE: MUR 2892
Tetsuo and Yasuo Yasuda

Dear Ms. Chun:

This is in response to your letter dated June 5, 1990, which we received on June 6, 1990, requesting an extension of twenty days to respond to the above captioned matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on June 29, 1990.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Jonathan Bernstein

BY: Jonathan Bernstein
Assistant General Counsel

9404357281 2

Friends of
Ann Kobayashi
3657 Waialoa Way · Honolulu, Hawaii 96822 · Telephone: 988-2918

OGC [redacted] 6473

June 4, 1990

Lee Ann Elliot
Chairman
Federal Election Commission
Washington, D.C. 20463

Dear Ms. Elliot:

I am writing in response to your letter regarding MUR 2846 (Ann H. Kobayashi Campaign Committee).

I would like to clarify the situation concerning the contribution made to my campaign committee, Friends of Ann Kobayashi by the Royal Hawaiian Country Club.

During the fall of 1988, a check in the amount of $100.00 was written by the Royal Hawaiian Country Club for donation to the Friends of Ann Kobayashi campaign committee. At that time, Friends of Ann Kobayashi was not aware that the Royal Hawaiian Country Club was under foreign ownership. The check was deposited by Friends of Ann Kobayashi.

In an FEC letter dated April 17, 1989, Friends of Ann Kobayashi was notified that the Royal Hawaiian Country Club was foreign controlled and that the $100.00 contribution made to Friends of Ann Kobayashi by Royal Hawaiian was in violation of Federal election law.

Upon receipt of this information, Friends of Ann Kobayashi sent Royal Hawaiian a check in the amount of $100.00 to return the initial contribution.

To the best of the information made available to us, no further contributions have been received by Friends of Ann Kobayashi from Royal Hawaiian or any other foreign or foreign owned entity.

Sincerely,

Ann Kobayashi

Ann H. Kobayashi
State Senator, 14th District
State of Hawaii

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT
90 JUN -7 PM 3:57

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN -8 AM 10:31

9404357281 3

OGC 6487

TOBISHIMA PACIFIC, INC.
PACIFIC TOWER, SUITE 1140
1001 BISHOP STREET
HONOLULU, HAWAII 96813
PHONE (808) 521-4787

June 4, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN -8 PM 2:25

Ms. Lee Ann Elliot
Federal Election Commission
Washington D.C. 20463

Re: MUR 2892
Tobishima Pacific, Inc.

Dear Ms. Elliot:

We request an extension of time to respond to the Commission's Interrogatories and Request for Production of Documents and to provide additional factual and legal materials supporting our belief that no action should be taken against us. We need the additional time so that our legal counsel can assist us in reviewing the relevant materials and advise us how to proceed.

Enclosed please find our Designation of Counsel form naming Albert H. Ogawa, Esq. as our attorney.

Sincerely,

Tetsuo Fukuda
Tobishima Pacific, Inc.

Enclosure

cc: Albert H. Ogawa, Esq.

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT
90 JUN -8 PM 1:56

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 2892

NAME OF COUNSEL: Albert H. Ogawa, Esq.

ADDRESS: 235 Queen Street, 6th Floor
Honolulu, Hawaii 96813

TELEPHONE: (808) 524-4787

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

6/4/90
Date

Signature

RESPONDENT'S NAME: Tobishima Pacific, Inc.

ADDRESS: Bishop Square, Suite 1140
1001 Bishop Street
Honolulu, Hawaii 96813

HOME PHONE:

BUSINESS PHONE: (808) 521-4787

9404357283 15

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 13, 1990

Mr. Albert H. Ogawa, Esq.
235 Queen Street, 6th Floor
Honolulu, Hawaii 96813

RE: MUR 2892
Tobishima Pacific, Inc.

Dear Mr. Ogawa:

This is in response to a letter from your client dated June 4, 1990, which we received on June 8, 1990, designating you as counsel and requesting an extension of time to respond to the above-captioned matter. After considering the circumstances presented in the letter, I have granted the requested extension. Accordingly, your response is due by the close of business on June 29, 1990.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Jonathan Bernstein
Assistant General Counsel

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WILMER, CUTLER & PICKERING
2445 M STREET, N. W.
WASHINGTON, D. C. 20037-1420
TELEPHONE (202) 663-6000
FACSIMILE (202) 833-0818,
429-0653, 429-4820, 293-5929
TELEX 440220 WCPI UI
ABA NET ABA1354

4 CARLTON GARDENS
LONDON SW1Y 5AA
TELEPHONE 011 (441) 839-4466
FACSIMILE 011 (441) 839-3537
TELEX 8813918 WCP LDN

15 RUE DE LA LOI
B-1040 BRUSSELS
TELEPHONE 011 (322) 231-0903
FACSIMILE 011 (322) 230-4322

DANIEL K. MAYERS
DIRECT LINE (202)
663-6228

June 7, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN -8 AM 10: 27

BY HAND DELIVERY

Mr. Michael Troy
Office of the General Counsel
Federal Election Commission
999 E Street, N.W., 6th Floor
Washington, D.C. 20463

Re: MUR 2892
Coordination Council for North American Affairs

Dear Mr. Troy:

The Coordination Council for North American Affairs ("CCNAA") is the designated instrumentality of the government of the Republic of China for purposes of representation in the United States. As such, it is entitled to the immunities provided by the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602 et seq., and other privileges and immunities extended by the President of the United States. Nothing in this letter constitutes a waiver by CCNAA of any of its privileges and immunities or a submission to the jurisdiction of the Federal Election Commission.

On May 30, 1990, CCNAA's Honolulu office received a letter from Ms. Lee Ann Elliott, the Chairman of the Federal Election Commission, dated May 21, 1990, stating that the Commission has found reason to believe that CCNAA violated 2 U.S.C. § 441e and offering CCNAA an opportunity to demonstrate that no action should be taken, or to request pre-probable cause conciliation. The letter further states that CCNAA should submit its response, along with answers to the enclosed questions, within 15 days after receipt of the letter, which would be next Thursday, June 14.

CCNAA requests a twenty day extension of time, through July 5, to respond to the letter. Preparation of an appropriate response will require an extension of time for several reasons. This firm, which has been retained as counsel by CCNAA in

9404357281 7

connection with this matter, has just received a copy of the Commission's letter. Our client does not have a copy of the original complaint in MUR 2892. Under the circumstances, it will not be possible for us to ascertain the facts before June 14. In addition, this case involves an entity with the legal status of a foreign government and presents issues of sovereign immunity.

Accordingly, a twenty day extension of time is necessary and appropriate. I will contact you tomorrow to learn your decision on this request.

In addition, as discussed over the telephone this afternoon with my partner Carol Lee, we need a copy of the June 1989 administrative complaint in MUR 2892 in order to prepare a response to the factual allegations. I understand that the Commission is prepared to provide such a copy, and that I should request it in this letter.

Sincerely,

Daniel K. Mayers

9404357228 18

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 13, 1990

Mr. Stephen S. F. Chen
Coordination Council of
North American Affairs
4101 Wisconsin Ave. N.W.
Third Floor
Washington, DC 20016

RE: MUR 2892

Dear Mr. Chen:

This is in response to a letter dated June 1, 1990, which we received on June 7, 1990, from Daniel K. Mayers of the law firm of Wilmer, Cutler, & Pickering.

Mr. Mayers' letter requested an extension until July 5, 1990 for the Coordination Council to respond to the above-captioned matter. After considering the circumstances presented in the letter, I have granted the requested extension. Accordingly, your response is due by the close of business on July 5, 1990.

Enclosed you will find a copy of the original complaint pursuant to the request in Mr. Mayers' letter.

If, in the future, you would like the Commission to deal directly with counsel whom you have chosen to handle this matter, please send the Commission a signed statement naming your designated counsel at your earliest convenience.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Jonathan Bernstein
Assistant General Counsel

Enclosure

9404357281 9

OGC 6507

MATSUBARA, LEE & KOTAKE
ATTORNEYS AT LAW
A LAW CORPORATION

BENJAMIN M. MATSUBARA
GARY S. K. T. LEE
MERVYN M. KOTAKE
STEPHANIE A. REZENTS

EDSEL M. YAMADA
JASON M. TANI

CHARLES R. KENDALL BUILDING
888 MILILANI STREET, EIGHTH FLOOR
HONOLULU, HAWAII 96813-2918
TELEPHONE (808) 526-9566
FACSIMILE (808) 536-3840

June 5, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
90 JUN 11 PM 3:36

Ms. Lee Ann Elliott
Office of the Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MURs 2846 and 2892 - Hiroshi Kobayashi

Dear Ms. Elliott:

This is written on behalf of Mr. Hiroshi Kobayashi in response to your May 21, 1990 letter which we received on May 29, 1990. We are presently reviewing the various options presented in your letter including the option of conciliation. If this matter can be resolved quickly to the satisfaction of all parties by way of conciliation, we would certainly give that option strong consideration. Please send us more detailed information about the conciliation process so that we may discuss it with our client.

In the mean time, due to conflicts in our respective schedules, we will not be able to prepare a response within the allotted fifteen (15) days. Also, we would like the opportunity of exploring the conciliation alternative with you further which may render our response moot. Accordingly, we respectfully request a twenty (20) day extension from the deadline to submit a response.

RECEIVED
FEDERAL ELECTION COMMISSION
90 JUN 11 PM 4:38

Also, we would like to clarify one issue which seems to have some bearing on your arriving at your present position. It was noted on page 11 of the Legal and Factual Analysis that "A number of respondents, including the one named above, have failed to allege that they are United States citizens, resident aliens, or domestic subsidiaries of foreign nationals entitled to make contributions". The Analysis concludes by stating "In light of the unrefuted allegations in the complaint that such persons are foreign nationals, there is reason to believe respondent violated" the Act. For the record, we would like to point out that Mr. Hiroshi Kobayashi is a permanent resident alien as defined under 8 U.S.C. Sec. 1101(a)(20), and is registered with the Immigration and Naturalization Service

Our previous response was based purely on

9404357282 0

Ms. Lee Ann Elliott
Office of the Chairman
Federal Election Commission

jurisdictional and legal grounds and, therefore, we did not raise this point. If Mr. Kobayashi's resident alien status affects your position, please advise.

By this letter we do not intend to waive the jurisdictional and legal defenses previously raised and we expressly reserve same. However, we are interested in resolving this matter in an expeditious and cost effective manner and if it can be done through conciliation we would certainly like to explore that further.

Thank you for your consideration on this matter.

Very truly yours,

MATSUBARA, LEE & KOTAKE

Mervyn M. Kotake

Mervyn M. Kotake

cc: Mr. Hiroshi Kobayashi

9404357283 21

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

June 18, 1990

Mr. Mervyn M. Kotake
Matsubara, Lee & Kotake
Charles R. Kendall Building
888 Mililani Street, Eighth Floor
Honolulu, Hawaii 96813-2918

RE: MUR 2892
Hiroshi Kobayashi

Dear Mr. Kotake:

This is in response to your letter dated June 5, 1990, which we received on June 11, 1990, requesting an extension of twenty days to respond to the above captioned matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on July 3, 1990.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Jonathan Bernstein
Assistant General Counsel

2404357283 22

OOC 6588

Albert Jeremiah Jr.
Attorney at Law
1178 AKUMU STREET · KAILUA, HI 96734 · (808) 262-7062

June 7, 1990

90 JUN 11 PM 3:37
RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

Ms. Lee Ann Elliott, Chair
Office of the General Counsel
Federal Election Commission
Room 659
999 E Street, N. W.
Washington, D. C. 20463

Attention: Ms. Patty Reilly

Dear Ms. Elliott:

RE: MUR 2892 - David W. Kahanu Campaign Committee

The Respondent Committee relative to MUR 2892 has retained my services and I am enclosing a Statement of Designation of Counsel in your form received in your May 21, 1990 letter to Mr. David W. Kahanu's Campaign Committee.

90 JUN 11 PM 4:39
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

It is our intent to file the answers to your interrogatories and pertinent material within the next few days. However, I request, pursuant to 11 C.F.R. Sec. 111.18(d), an opportunity to pursue pre-probable cause conciliation.

My clients seek to cooperate and will do everything possible to bring this matter to an amicable resolution.

Sincerely,

ALBERT JEREMIAH, JR., Esq.

AJ:dsf

Enclosure

2404357283

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2892

NAME OF COUNSEL: Albert Jeremiah, Jr.

ADDRESS: 1178 Akumu Street
Kailua, HI 96734

TELEPHONE: (808) 262-7082

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

June 5, 1990
Date

Signature

RESPONDENT'S NAME: Committee of Honolulu City Councilman David W. Kahanu

ADDRESS: City Hall
530 S. King Street
Honolulu, HI 96813

HOME PHONE: (808) 261-3100

BUSINESS PHONE: (808) 523-4035

2404357282 4

06C 6542

GOODSILL ANDERSON QUINN & STIFEL

ATTORNEYS AT LAW

1600 BANCORP TOWER
130 MERCHANT STREET
HONOLULU, HAWAII 96813

MAIL ADDRESS: P.O. BOX 3196
HONOLULU, HAWAII 96801

FACSIMILE (808) 531-2628
TELEPHONE (808) 547-5600
TELEX 7430246 (RCD)

RECEIVED
FEDERAL ELECTION COMMISSION
90 JUN 11 AM 11:

June 7, 1990

Patty Reilly, Esq.
Office of the General Counsel
Federal Election Commission
Room 659
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 13 AM 11:33

Re: MUR 2892 and 3004 - Otaka, Inc.

Dear Ms. Reilly:

We represent Otaka, Inc. in MUR 2892. See the enclosed Designation of Counsel. We also represent Otaka, Inc. in MUR 3004.

In both MUR 2892 and MUR 3004, violations of 2 U.S.C. Section 441e are alleged.

On May 25, 1990, Otaka, Inc. received a letter from the Chairman of the Federal Election Commission that the Commission had found a reason to believe Otaka, Inc. violated 2 U.S.C. Section 441e with respect to MUR 2892. Otaka has not received notification that any action has been taken by the Commission with respect to MUR 3004.

Otaka believes that based upon considerations of orderliness and time and cost savings, both with respect to Otaka, Inc. and the Commission, all proceedings in MUR 2892 should be stayed pending receipt of notification by Otaka, Inc. that action, whether favorable or unfavorable to Otaka, Inc., has been taken by the Commission with respect to MUR 3004. Accordingly, Otaka, Inc. requests that extensions be permitted on all matters which Otaka, Inc. is allowed or required to submit to the Commission

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with respect to MUR 2892, e.g., submission of further legal and factual material, answers to interrogatories, requests for pre-probable cause conciliation, etc. The extension requested is for a period ending 15 days following receipt of notification that action has been taken by the Commission with respect to MUR 3004.

Very truly yours,

GOODSILL ANDERSON QUINN & STIFEL

Robert F. Hirano

RFH:mjc

24043572826

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2882

NAME OF COUNSEL: GOODSILL ANDERSON QUINN & STIFEL
Robert F. Hirano
Russell S. Kato
130 Merchant Street, 16th Floor
Honolulu, Hawaii 96813

TELEPHONE: (808) 547-5600

The above-named individuals are hereby designated as my counsel and are authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

JUN 6 - 1990
Date

S. Kawagishi
Signature

RESPONDENT'S NAME: B. STEPHEN KAWAGISHI
President
Otaka, Inc.

ADDRESS: 2571 Lemon Road
Honolulu, Hawaii 96815

HOME PHONE: (808) 395-1636

BUSINESS PHONE: (808) 924-4067

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OGC 6519

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

90 JUN 12 PM 12:35

June 7, 1990

Ms. Lee Ann Elliott, Chairman
Ms. Patty Reilly, Esq.
Federal Election Commission
Washington, D.C. 20463

RE: MUR 2892
"CAMPAIGN OF LEIGH-WAI DOO"
(DOO FOR CONGRESS CAMPAIGN: 1988)

90 JUN 12 PM 4:12
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Dear Chairman Elliot and Attorney Reilly:

Thank you for your letter of May 21, 1990 on the above subject matter which we received on May 29, 1990.

Please know that the Campaign of Leigh-Wai Doo, formally the Doo for Congress Campaign did not and does not challenge the Federal Election Commission's interpretation of a prohibition of contribution by foreign nationals to any federal, state or local campaign. The Federal Election Commission's Fact and Legal Analysis MUR: 2892 addresses defenses that the Campaign of Leigh-Wai Doo never raised. In the excitement of the campaign, the campaign committee and I had no way of knowing the nationality of contributors. It is not required in our local laws. I personally was campaigning and not involved in finances. I am pleased to comply with your instructions now that we know of the Federal Election Commission's assertion of the the donors' nationality and the Federal Election Commission's interpretation.

Learning of a potential violation, I have personally gotten involved to resolve the problem. In an earlier letter to your office I had stated:

> "I am informed that Messrs. Hayashida and Kobayashi are permanent resident aliens, commonly referred to as Green Card Holder, of the United States. With that status, I am informed that under the Federal Election Campaign Act of 1971 they are allowed to make personal political contributions to candidates for public office like myself. If the information is incorrect, I will be glad to do whatever you deem appropriate including returning the contribution to the contributor who is deemed to lack the capacity to contribute."

9404357283 28

Not having heard further from your office please know that on December 18, 1989 the campaign committee of Leigh-Wai Doo, formally the Doo for Congress Committee, returned the $1,000.00 contributions received in 1988 to both Mr. Ken Y. Hayashida and Mr. Masanori Kobayashi by returning to each the sum of $1,000 by check.

We have just reissued the checks to ensure that the funds are not in our campaign account. To my knowledge there are no other contributions from foreign nationals.

We hope and trust that this new information will resolve any issues, no violation will be found and no further action will be necessary in response to the complaint. If there are further remedial efforts which are needed to be undertaken to avoid conciliation please feel free to call me at home (808) 732-0006 or at work (808) 544-0963 or write me at your earliest convenience. I am wanting to do all that is necessary to correct the situation.

If the Commission believes this matter should be pursued further, and in order to timely preserve our rights, please consider this writing as a formal request for preprobable cause conciliation. Hopefully that will not be necessary as the campaign of Leigh-Wai Doo wishes to comply fully with the letter and spirit of the federal election laws.

The above information is true and correct to the best of my knowledge.

Sincerely,

Leigh-Wai Doo

LEIGH-WAI DOO
1188 Bishop Street, Suite 1203
Honolulu, Hawaii 96813
(808) 544-0963

9 4 0 4 3 5 7 2 8 2 9

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUN 11 AM 11:07

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 11 PM 1:08

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

ANSWERS TO INTERROGATORIES
AND SUBMITTAL OF DOCUMENTS

The Respondent, Committee of Honolulu City Councilman David W. Kahanu, through its attorney, Albert Jeremiah, Jr., answers the following interrogatories set forth by the Commission.

I. Interrogatories

1. Regarding the complaint or complaints you received in above captioned matter, state whether you have received any contributions from the alleged foreign nationals noted in the complaint. If so, for each, list the name of the contributor, amount, date, and whether or not such contribution has been refunded.

Name	Date Received	Amount	Returned
Royal Hawaiian Country Club	6/15/87	$250.00	2/1/89
American Hawaii Cruises	7/27/87	$250.00	6/19/89
	3/15/89	$250.00	6/20/89
Pan Pacific Construction	3/8/89	$125.00	6/19/89
Pan Pacific Construction	3/8/89	$125.00	6/19/89

As noted above, all contributions received has been refunded.

2. List all other contributions received from foreign nationals, and for each, list the name of the contributor, amount, date, and whether or not such contribution has been refunded.

A review of the respondent's records revealed no other contributions received from foreign nationals. We note for the record that Pan Pacific Construction and Pan Pacific Development were not included in prior communication given to this commission. (See Exhibit 1 attached)

II. Submittal of Documents

In accordance with the Commission's request, we submit the following copies of documents which indicates information relative to your inquiry.

Exhibit 2 - Document: Report of Campaign Receipts and Expenditures dated 1/1/87 through 6/30/87; three pages submitted to show time, filing date and questioned contribution - to wit, Royal Hawaiian Country Club Golf Course.

Exhibit 3 - Document: Report of Campaign Receipts and Expenditures dated 7/1/87 through 12/31/87; three pages submitted and questioned contribution - to wit, American Hawaii Cruises.

2 4 0 4 3 5 7 2 8 3 1

Exhibit 4 - Document: Report of Campaign Receipts and Expenditures dated 1/1/89 through 6/30/89; three pages submitted to show time, filing date and questioned contributions - to wit, Pan Pacific Construction, Pan Pacific Development and American Hawaii Cruises.

Exhibit 5 - Copies of: U. S. Mail Domestic Return Receipt to Royal Hawaiian Country Club from Councilman David W. Kahanu and check to Royal Hawaiian Country Club refunding contribution.

Exhibit 6 - Copies of: U. S. Mail Domestic Return Receipt to American Hawaii Cruises from Friends of David W. Kahanu and check to American Hawaii Cruises refunding contribution.

Exhibit 7 - Copies of: U. S. Mail Domestic Return Receipt to Pan Pacific Development, c/o Mr. Willy Nakakura from Friends of David W. Kahanu and checks to American Hawaii Cruises, Pan Pacific Construction and Pan Pacific Development refunding contributions.

2 4 0 4 3 5 7 2 8 3 2

Exhibit 8 - Copies of letter to Mr. Tom Woo, c/o Councilman David W. Kahanu from Wilfred S. Nakakura with attached letter to Mr. Nakakura from his attorneys relative to his contributions.

The above is submitted in compliance with the Commission's letter of May 21, 1990 and received on May 29, 1990.

Dated Honolulu, Hawaii, June 8, 1990.

Respectfully submitted,

ALBERT JEREMIAH, JR., ESQ.

Attorney for the Respondent

2404357283

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII 96813 / TELEPHONE 523-4000

DAVID W. KAHANU
COUNCILMEMBER

May 24, 1989

Mr. Lawrence M. Noble
General Counsel
Federal Elections Commission
999 E Street, N. W.
Washington, D. C. 20463

Dear Mr. Noble:

RE: MUR 2846

Pursuant to a discussion with Ms. Patty Reilly of your office regarding our communication dated May 2, 1989 to you, we provide the following information.

On February 1, 1989, we returned $250 to Royal Hawaiian Country Club, which is a Japanese-owned business, when it became evident that contributions from foreign nationals are not permitted under Federal Campaign Spending Laws. Further, upon receipt of the material transmitted with your April 17 letter, we discovered that American Hawaii Cruises, a company based in San Francisco, is also owned by foreign nationals. Therefore, we will be returning the $250 which we received from them on July 27, 1987.

We are uncertain as to how the nationality of ownership of a company or its principals could be determined other than asking each contributor at the time of contribution. At times the names of the principals may give an indication of nationality, however, it is not always a definite thing, especially in a multi-ethnic culture like Hawaii.

However, we hope this will assure you of our clear intent to abide by the spirit of the Federal Election Campaign Act of 1971.

Sincerely,

DAVID W. KAHANU
Councilman

DWK:TW:dsf

3 4 0 4 3 5 7 2 8 3 3 4

EXHIBIT 1

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

ELECTION YEAR

REPORT OF CAMPAIGN RECEIPTS AND EXPENDITURES

This Report Covers The Period From 1/1/87 thru 6/30/87

SECTION A
NAME AND ADDRESS OF CANDIDATE'S COMMITTEE

NAME FRIENDS OF DAVID W. KAHANU
ADDRESS P.O. BOX 1429
CITY STATE KANEOHE, HAWAII 96744
TEL 527-5819 RES 947-9790
Treasurer's Telephone

TYPE REPORT IS A:
- ☐ Pre Primary Report
- ☐ Post Primary Report
- ☒ Supplemental Report
- ☐ Final Termination Report (Balance Must be Reduced to Zero)
- ☐ Other
- ☐ Pre General Report
- ☐ Post General Report
- ☐ Amending Report

SECTION B — SUMMARY OF RECEIPTS AND EXPENDITURES
(Fill Out Sections C, D, E & F Before Section B)

RECEIPTS		EXPENDITURES	
[illegible]	3,075.00	[illegible]	11,473.07
[illegible]	14,032.11	[illegible]	
[illegible]		[illegible]	11,473.07
[illegible]	17,107.11	[illegible]	88,369.71
[illegible]	93,676.67	[illegible]	99,842.78
[illegible]	110,783.78		
[illegible]	4,000.00		
[illegible]		15. SURPLUS [illegible]	10,941.72
[illegible]	114,783.78	16. DEFICIT [illegible]	
		CASH BALANCE AS OF 6/30/87	11,962.25

SECTION C — AGGREGATE CONTRIBUTIONS OVER $100

DATE RECEIVED	NAME AND ADDRESS OF DONOR	OCCUPATION OF DONOR	AMOUNT OF THIS CASH CONTRIBUTION	VALUE OF THIS NON-MONETARY CONTRIBUTION	AGGREGATE TOTAL TO DATE
	SEE ATTACHED PAGE 1 TO 3		14,032.11		

17 TOTAL AGGREGATE CONTRIBUTIONS OVER $100 THIS PAGE .....
18 TOTAL AGGREGATE CONTRIBUTIONS OVER $100 FROM SUPPORTING SCHEDULE .....
19 TOTAL AGGREGATE CONTRIBUTIONS OVER $100 THIS PERIOD (Add Lines 17 & 18) .....

EXHIBIT

9404357283 5

SECTION D **OTHER RECEIPTS** (Public Funding, Interest Received, Other)

DATE	SOURCE	ADDRESS	DESCRIPTION	AMOUNT

20 TOTAL OTHER RECEIPTS THIS PERIOD ..... $

SECTION E **LOANS AND CANDIDATE'S POLITICAL EXPENDITURES OF PERSONAL FUNDS**

DATE	NAME AND ADDRESS OF LENDER OR CANDIDATE	BALANCE AT BEGINNING OF PERIOD	CHANGES DURING PERIOD	BALANCE (Loans)	BALANCE (Exp. of Personal Funds)
1/30/87	LIBERTY BANK MAIN BRANCH - KING STREET HONOLULU, HAWAII 96813	10,000.00	6,000.00	4,000.00	

21 CURRENT BALANCE OF LOAN ..... $ 4,000.00

22 CURRENT BALANCE OF CANDIDATE'S POLITICAL EXPENDITURES OF PERSONAL FUNDS ..... $

SECTION F **EXPENDITURES**

INVOICE DATE	VENDOR NAME AND ADDRESS	PURPOSE & DESCRIPTION	AMOUNT OF INVOICE PAID THIS PERIOD	AMOUNT OF UNPAID INVOICE*
	SEE ATTACHED - PAGES 1 TO 8		11,473.07	

*If this is an unpaid invoice from last period being paid this period, show the amount being paid and same amount as a negative number this column.

	COLUMN 1 +	COLUMN 2 =	COLUMN 3
	TOTAL THIS PAGE	TOTAL FROM SUPP. SCHEDULE	TOTAL THIS PERIOD
23. EXPENDITURES			11,473.07
24. EXPENDITURES INCIDENTAL TO FUNDRAISERS			

OAHU CANDIDATES - Submit original and 1 copy
NEIGHBOR ISLAND CANDIDATES - Submit original and 2 copies

Certification: I hereby certify that the above and all attached Schedules are complete, correct and true statements to the best of my knowledge.

Candidate's Signature Date Treasurer's Signature Date

Thomas R Woo 7/28/87

9 4 0 4 3 5 7 2 8 3 6

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

AGGREGATE CONTRIBUTIONS OVER $100

NAME OF CANDIDATE, COMMITTEE OR PARTY: FRIENDS OF DAVID KAHANU, P. O. Box 1429, Kaneohe, Hawaii 96744

DATE RECEIVED	NAME AND ADDRESS OF DONOR	OCCUPATION IF A MINOR GIVE NAME OF PARENT	COLUMN 1 AMOUNT OF THIS CASH CONTRIBUTION	COLUMN 2 VALUE OF THIS IN KIND CONTRIBUTION DESCRIPTION	COLUMN 3 AGGREGATE TOTAL TO DATE DONOR
4/9/87	SVCO PACIFIC HI INC P.O. BOX 2788 HONO, HI. 96803	POLITICAL ACTION	250		
6/9/87	COMMUNITY PLANNING 700 BISHOP ST-608 HONO, HI. 96813	PLANNERS	500		
4/15/87	ROYAL HAWAIIAN CC 581 KAMOKU ST. S 2604 HONO, HI. 96826	GOLF COURSE DEVELOPER	250		
6/15/87	CONSTRUCTION ENGINEER 846 S. HOTEL ST HONO, HI. 96813	CONTRACTOR	250		
6/15/87	H. MORITA 1212 PUNAHOU ST. NO. 903 HONO, HI. 96826	CAB BUSINESS	200		
6/29/87	RICHARD MEW 1605 AMOAMO ST. HONO, HI. 96817	REAL ESTATE DEVELOPER	1500		
			TOTAL COLUMN 1:	TOTAL COLUMN 2:	NOTE: IN KIND CONTRIBUTIONS ARE ALSO EXPENDITURES WHEN USED

SUBTOTAL of Contributions Over $100 This Page 2950.00

TOTAL This Period (last page this line only) 14,032.11

9404357283 7

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

ELECTION YEAR

REPORT OF CAMPAIGN RECEIPTS AND EXPENDITURES

This Report Covers The Period From 7/1/87 thru 12/31/87

SECTION A
NAME AND ADDRESS OF CANDIDATE'S COMMITTEE

NAME FRIENDS OF DAVID W. KAHANU
ADDRESS P.O. BOX 1429
CITY STATE KANEOHE, HI. 96744
PHONE 527-5814 RES 521-6202

THIS REPORT IS A

- [ ] Pre-Primary Report
- [ ] Post Primary Report
- [x] Supplemental Report
- [ ] Final Termination Report (Balance Must be Reduced to Zero)
- [ ] Other

SECTION B SUMMARY OF RECEIPTS AND EXPENDITURES

RECEIPTS		EXPENDITURES	
1 Contributions $100 or Less	1,125.00	10 Expenditures Line 25 Col. 1	11,327.
2 Contributions Aggregating Over $100 Line 19	17,450.00	11 Financing Expenditures Line 26 Col. 1	
3 Other Receipts Line 20		12 Total Expenditures This Period Add Lines 10 and 11	11,327.
4 Total Contributions This Period Add Line 1 thru 3	18,575.00	13 Total Expenditures From Prior Report See B Line 14 of Prior Report	99,842.
5 Total Contributions From Prior Report See B Line 6 of Prior Report	110,783.78	14 Total Expenditures To Date Add Lines 12 & 13	111,169.
6 Total Contributions to Date Add Lines 4 & 5	129,358.78		
7 Balance of Outstanding Loans Line 21			
8 Political Expenditures of Personal Funds Line 22			
9 Total Receipts to Date Add Lines 6 thru 8	129,358.78	15 SURPLUS If Line 9 Minus Line 14 is Positive	18,189.
		16 DEFICIT If Line 9 Minus Line 14 is Negative	
		CASH BALANCE AS OF 12/31/87	18,089.65

SECTION C AGGREGATE CONTRIBUTIONS OVER $100

DATE RECEIVED	NAME AND ADDRESS OF DONOR	OCCUPATION OF DONOR	AMOUNT OF THE CASH CONTRIBUTION	VALUE OF THE NON-MONETARY CONTRIBUTION	AGGREGATE TOTAL TO DATE
	SEE ATTACHED PAGES 1 TO 5		17,450.00		

17 TOTAL AGGREGATE CONTRIBUTIONS OVER $100 THIS PAGE 17,450
18 TOTAL AGGREGATE CONTRIBUTIONS OVER $100 FROM SUPPORTING SCHEDULE .....
19 TOTAL AGGREGATE CONTRIBUTIONS OVER $100 THIS PERIOD (Add Lines 17 & 18) 17,450

EXHIBIT

9404357283

SECTION D **OTHER RECEIPTS (Public Funding, Interest Received, Other)**

DATE	SOURCE	ADDRESS	DESCRIPTION	AMOUNT

20 TOTAL OTHER RECEIPTS THIS PERIOD ..... $_____

SECTION E **LOANS AND CANDIDATE'S POLITICAL EXPENDITURES OF PERSONAL FUNDS**

DATE	NAME AND ADDRESS OF LENDER OR CANDIDATE	BALANCE AT BEGINNING OF PERIOD	CHANGES DURING PERIOD	BALANCE (Loans)	BALANCE (Exp. of Personal Funds)
2/31/87	LIBERTY BANK MAIN OFFICE - KING STREET HONOLULU, HI. 96813	4,000.00	(4,000.00)	-0-	

21 CURRENT BALANCE OF LOAN ..... $ -0-

22 CURRENT BALANCE OF CANDIDATE'S POLITICAL EXPENDITURES OF PERSONAL FUNDS ..... $_____

SECTION F **EXPENDITURES**

INVOICE DATE	VENDOR NAME AND ADDRESS	PURPOSE & DESCRIPTION	AMOUNT OF INVOICE PAID THIS PERIOD	AMOUNT OF UNPAID INVOICE*
	SEE ATTACHED - PAGES 1 TO 9		11,329.96	

*If this is an unpaid invoice from last period being paid this period, show the amount being paid and same amount as a negative number this column.

	COLUMN 1 +	COLUMN 2 =	COLUMN 3
	TOTAL THIS PAGE	TOTAL FROM SUPP. SCHEDULE	TOTAL THIS PERIOD
23. EXPENDITURES			11,327.96
24. EXPENDITURES INCIDENTAL TO FUNDRAISERS			

OAHU CANDIDATES - Submit original and 1 copy
NEIGHBOR ISLAND CANDIDATES - Submit original and 2 copies

Certification: I hereby certify that the above and all attached Schedules are complete, correct and true statements to the best of my knowledge.

Candidate's Signature Date Treasurer's Signature 1/27/88 Date

9404357283 9

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

AGGREGATE CONTRIBUTIONS OVER $100

NAME OF CANDIDATE, COMMITTEE OR PARTY: FRIENDS OF DAVID KAHANU
P. O. Box 1429
Kaneohe, Hawaii 96744

DATE RECEIVED	NAME AND ADDRESS OF DONOR	OCCUPATION / IF A MINOR ENTER NAME OF PARENT	(COLUMN 1) AMOUNT OF THIS CASH CONTRIBUTION	(COLUMN 2) VALUE OF THIS IN-KIND CONTRIBUTION / DESCRIPTION	(COLUMN 3) AGGREGATE TOTAL FROM DONOR
7/14/87	OAHU CONSTRUCTION PO BOX 1226 HONO HI 96817		900.00		
	WEST BEACH ESTATES 1585 KAPIOLANI S-1430 HONO HI 96814		925.00		
	R. CHING 3143 ALIKA AVE. HONO, HI. 96817	HIGHWAY CONTRACTOR	1,000.00		
7/27/87	AMERICAN HAWAII CRUISES 550 KEARNY ST. SAN FRANCISCO, CA. 94108	SHIPPING	250.00		
8/10/87	ABC GLASS 99-1096 IWAENA ST. AIEA, HI. 96701	CONTRACTOR	200.00		
	MASTER SHEET METAL 1548 AUIKI ST. HONO HI. 96819	CONTRACTOR	200.00		
	P. RIVERA PO BOX 546 MAKAWAO HI 96768	ROOFING	200.00		
	FLOOR TRENDS HAWAII 94-311 LEONUI ST. WAIPAHU HI. 96797	CONTRACTOR	200.00		
	KURIHARA PAINTING CO., LTD 98-1354 WAIONA ST. P.C. HI. 96782	CONTRACTOR	200.00		
	CALVIN KIM & ASSOC. 1017 PALM DR. HONO. HI. 96814	CONSULTANTS	250.00		
	CONTROL POINT 1287 SO. KING S-2 HONO, HI. 96814	ENGINEERS	250.00		
			TOTAL COLUMN 1:	TOTAL COLUMN 2:	NOTE: IN-KIND CONTRIBUTIONS ARE ALSO EXPENDITURES WHEN USED

1. SUBTOTAL of Contributions Over $100 This Page 4575.00
1. TOTAL This Period (last page this line only) .....

2404357284 0

CA. AIGN SPENDING COMMISSION

ELECTION YEAR _____

REPORT OF CAMPAIGN REC TS AND EXPENDITURES

This Report Covers The Period From 1/1/89 thru 6/30/89

SECTION A
NAME AND ADDRESS OF CANDIDATE'S COMMITTEE
(Must be same as appearing on organizational report)

NAME FRIENDS OF DAVID W. KAHANU
ADDRESS P.O. BOX 1429
CITY STATE KANEOHE, HI. 96744
BUS 523-4035 RES 521-6202
Treasurer's Telephone

THIS REPORT IS A

- ☐ Pre Primary Report
- ☐ Pre General Report
- ☐ Post Primary Report
- ☐ Post General Report
- ☒ Supplemental Report
- ☐ Amended Report
- ☐ (Balance Must be Reduced to Zero)
- ☐ Other _____

SECTION B — **SUMMARY OF RECEIPTS AND EXPENDITURES**
(Fill Out Sections C, D, E & F Before Section B)

RECEIPTS

1. Contributions of $100 or Less	8,033.42
2. Contributions Aggregating Over $100 (Line 18)	51,575.00
3. Other Receipts (Line 20)	—
4. Total Contributions This Period (Add Line 1 thru 3)	59,608.42
5. Total Contributions From Prior Report (Sec. B Line 8 of Prior Report)	160,133.78
6. Total Contributions to Date (Add Lines 4 & 5)	219,742.20
7. Balance on Outstanding Loans (Line 21)	—
8. Political Expenditures of Personal Funds (Line 22)	—
9. Total Receipts to Date (Add Lines 6 thru 8)	219,742.20

EXPENDITURES

10. Expenditures (Line 23 Col. 3)	24,315.3
11. Fundraising Expenditures (Line 24 Col. 3)	—
12. Total Expenditures This Period (Add Lines 10 and 11)	24,315.3
13. Total Expenditures From Prior Report (Sec. B Line 14 of Prior Report)	140,835.7
14. Total Expenditures to Date (Add Lines 12 & 13)	165,151.0
15. SURPLUS (If Line 6 Minus Line 14 is Positive)	54,591.1
16. DEFICIT (If Line 6 Minus Line 14 is Negative)	—
CASH BALANCE AS OF 6/30/89	56,525.76

SECTION C — **AGGREGATE CONTRIBUTIONS OVER $100**

DATE RECEIVED	NAME AND ADDRESS OF DONOR	OCCUPATION (If Employed)	AMOUNT OF THIS CASH CONTRIBUTION	VALUE OF THIS NON-MONETARY CONTRIBUTION	AGGREGATE TOTAL TO DATE
	SEE ATTACHED PAGES 1 TO 10		51,575.00		

17. TOTAL AGGREGATE CONTRIBUTIONS OVER $100 THIS PAGE ..... →
18. TOTAL AGGREGATE CONTRIBUTIONS OVER $100 FROM SUPPORTING SCHEDULE ..... →
19. TOTAL AGGREGATE CONTRIBUTIONS OVER $100 THIS PERIOD (Add Lines 17 & 18) 51,575.0

EXHIBIT

9404357284 1

DATE	SOURCE	ADDRESS	DESCRIPTION	AMOUNT

20 TOTAL OTHER RECEIPTS THIS PERIOD ..... $_____

SECTION E LOANS AND CANDIDATE'S POLITICAL EXPENDITURES OF PERSONAL FUNDS

DATE	NAME AND ADDRESS OF LENDER OR CANDIDATE	BALANCE AT BEGINNING OF PERIOD	CHARGES DURING PERIOD	BALANCE (Loans)	BALANCE (Use of Pers Funds)

21 CURRENT BALANCE OF LOAN $_____

22 CURRENT BALANCE OF CANDIDATE'S POLITICAL EXPENDITURES OF PERSONAL FUNDS $_____

SECTION F EXPENDITURES

INVOICE DATE	VENDOR NAME AND ADDRESS	PURPOSE & DESCRIPTION	AMOUNT OF INVOICE PAID THIS PERIOD	AMOUNT O UNPAID INVOICE*
	SEE ATTACHED PAGES 1 TO 10		24,315.30	

*If this is an unpaid invoice from last period being paid this period, show the amount being paid and same amount as a negative number this column.

	COLUMN 1 + TOTAL THIS PAGE	COLUMN 2 + TOTAL FROM SUPP. SCHEDULE	COLUMN 3 = TOTAL THIS PERIOD
23 EXPENDITURES			24,315.3
24 EXPENDITURES INCIDENTAL TO FUNDRAISERS			

OAHU CANDIDATES - Submit original and 1 copy
NEIGHBOR ISLAND CANDIDATES - Submit original and 2 copies

Certification: I hereby certify that the above and all attached Schedules are complete, correct and true statements to the best of my knowledge.

Candidate's Signature Date Treasurer's Signature 7/31/89 Date

9 4 0 4 3 5 7 2 8 4 2

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

AGGREGATE CONTRIBUTIONS OVER $100

NAME OF CANDIDATE, COMMITTEE OR PARTY: FRIENDS OF DAVID KAHANU, P. O. Box 1429, HONOLULU, HI 96744

DATE RECEIVED	NAME AND ADDRESS OF DONOR	OCCUPATION / IF A MINOR ENTER NAME OF PARENT	COLUMN 1: AMOUNT OF THIS CASH CONTRIBUTION	COLUMN 2: VALUE OF THIS IN-KIND CONTRIBUTION / DESCRIPTION	COLUMN 3: AGGREGATE TOTAL FROM OTHER SHEETS
3/8/89	DAVID C HULIHEE 677 AHUA ST HONO HI 96819	BUSINESS ADDRESS	1500.00		
	CHEW HOY LEE 2247 AMOKEMOKE ST PEARL CITY, HI 96782		1000.00		
	COMMUNITY PLANNING 700 BISHOP ST HONO HI 96813		1000.00		
	LUSK COMPANIES P.O. BOX C-19560 IRVINE CA 92713		1000.00		
	OAHU CONSTRUCTION P.O. BOX 1326 HONO HI. 96807		1000.00		
	HAITSUKA BROTHERS P.O. BOX 30625 HONO. HI. 96820		875.00		
	C. BREWER & CO P.O. BOX 1826 HONO HI. 96805		200.00		
	PACIFIC CONSTRUCTION 707 RICHARDS ST HONO, HI. 96813 S-400		200.00		
	JACKSON & HART ASSOC 130 JEWEL WAY HONO, HI. 96820		200.00		
	JAMES S. KOMETANI 1259 S. BERETANIA ST HONO. HI. 96814		150.00		
	PAN PACIFIC CONSTRUCT 1001 BISHOP S-1350 HONO, HI. 96813		125.00		
			TOTAL COLUMN 1:	TOTAL COLUMN 2:	NOTE: IN-KIND CONTRIBUTIONS ARE ALSO EXPENDITURES WHEN USED

1. SUBTOTAL of Contributions Over $100 This Page 7250.00
2. TOTAL This Period (last page this line only) .....

9 4 0 4 3 5 7 2 8 4 3

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

AGGREGATE CONTRIBUTIONS OVER $100

NAME OF CANDIDATE, COMMITTEE OR PARTY: FRIENDS OF DAVID KAHANU, P. O. Box 1429, Kaneohe, Hawaii 96744

DATE RECEIVED	NAME AND ADDRESS OF DONOR	OCCUPATION OF DONOR (ENTER NONE IF FAMILY)	COLUMN 1 AMOUNT OF THIS CASH CONTRIBUTION	COLUMN 2 AMOUNT OF THIS IN-KIND CONTRIBUTION (DESCRIBE)	COLUMN 3 AGGREGATE TOTAL FROM DONOR
3/8/89	PAN-PAC. DEVELOP 1001 BISHOP S-1350 HONO. HI. 96813		125.00		
	KOGA ENGINEERING 846 S. HOTEL ST HONO. HI. 96813		500.00		
	VIVIAN HEE 1724 BERTRAM ST HONO. HI. 96815		500.00		
	LEONARD LEONG 222 HINALO PL HONO. HI. 96817		500.00		
	ERICK PETER EHRHORN 45-639 NONOMANU PL KANEOHE, HI. 96744		500.00		
	RONALD H. MARUSHIGE 922 McCULLY ST. HONO. HI. 96826		500.00		
	JUNE TOTAKE 314 VICTORIA ST. NO. 701 HONO. HI. 96814		500.00		
	COLLEEN M. QUN 2 SARTLEY PL. HONO. HI. 96817		500.00		
	ALBERT KEL IIKULDA 1171 ST. LOUIS DR. HONO. HI. 96816		500.00		
	ENGINEER CONCEPTS 250 WARD AVE S-200 HONO. HI. 96814		500.00		
	NORMAN QUON 2212 McKINLEY ST HONO. HI. 96822		500.00		
			TOTAL COLUMN 1	TOTAL COLUMN 2	NOTE: IN-KIND CONTRIBUTIONS ARE ALSO EXPENDITURES WHEN USED

1. SUBTOTAL of Contributions Over $100 This Page 5125.00
2. TOTAL This Period (last page this line only) .....

2404357283844

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

AGGREGATE CONTRIBUTIONS OVER $100

NAME OF CANDIDATE, COMMITTEE OR PARTY: FRIENDS OF DAVID KAHANU, P. O. Box 1429, Kaneohe Hawaii 96744

DATE RECEIVED	NAME AND ADDRESS OF DONOR	OCCUPATION OF A MINOR ENTER NAME OF PARENT	COLUMN 1 AMOUNT OF THIS CASH CONTRIBUTION	COLUMN 2 VALUE OF IN-KIND CONTRIBUTION DESCRIPTION	COLUMN 3 AGGREGATE TOTAL FROM DONOR
3/15/89	LAWRENCE RODRIGUES 57147 KAWAI KAI DR HONO, HI. 96825		250.00		
	GOODSILL ANDERSON QUINN P.O. BOX 3196 HONO, HI. 96801		250.00		
3/15/89	KUHIO BUILDERS 1020 KEEAUMOKU ST HONO. HI 96814 RM 303		1450.00		
	A B C GLASS CO 99-1096 IWAENA ST AIEA, HI. 96701		1000.00		
	PAUL CASSIDY 2900 FORT ST MALL HONO HI 96813 S-1450		500.00		
	WADE MC VAY 2839-C PUUHONUA ST HONO. HI. 96822		500.00		
	FRED STROTTER 2900 FORT ST. MALL S-1450 HONO. HI. 96813		500.00		
	HERB CORNUELE 3711 POKA ST HONO HI. 96816		500.00		
	DOUBLE PHOENIX CORP 99-1349 KAUHI ST. AIWA BEACH, HI 96707		500.00		
	LAWRENCE LEE 5827 KALANIANAOLE H HONO. HI. 96821		450.00		
	AMERICAN HAWAII GRASSES 614 FORT ST. HONOLULU, HI. 96813		250.00		
			TOTAL COLUMN 1:	TOTAL COLUMN 2:	NOTE: IN KIND CONTRIBUTIONS ARE ALSO EXPENDITURES WHEN USED

1 SUBTOTAL of Contributions Over $100 This Page 6150.00

2 TOTAL This Period (last page this line only) .....

9404357284 5

7 4 0 4 3 5 7 2 8 4 6

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

PENALTY FOR PRIVATE USE $300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below.

Councilman David W. Kahaunaele
P.O. Box 1429
Kaneohe, HI 96744

EXHIBIT 5

7 4 0 4 3 5 7 2 8 4 7

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. (Extra charge)
2. ☐ Restricted Delivery (Extra charge)

3. Article Addressed to:

Royal Hawn Country Club
581 Kamoku St. Suite 4
Honolulu HI 96826

4. Article Number

P 787 355 011

Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee

X Royal Hawn C.C.

6. Signature — Agent

X Mitsunori Irone

7. Date of Delivery

FEB 7 1989

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Mar. 1987 ★ U.S.G.P.O. 1987-175-508 DOMESTIC RETURN RECEIPT

DAVID W. KAHANU
COUNCILMEMBER

ROYAL HAWAIIAN CC
581 KAMOKU ST. S-2404
HONO HI. 96826

FRIENDS OF DAVID KAHANU
P. O. BOX 1429
KANEOHE, HI 96744

No. 1162

FEB. 1 1989

59-105
1213

PAY TO THE ORDER OF ROYAL HAWAIIAN COUNTRY CLUB $250.00

TWO HUNDRED FIFTY EVEN DOLLARS

Main Office
Liberty Bank
99 N King St Hon, HI 96817

FOR RETURN OF 1987 CONTRIBUTION

Thomas Q Wu

⑈001162⑈ ⑆121301057⑆ 11-052428⑈

284

940435

P 4 0 4 3 5 7 2 8 4 9

UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

U.S. MAIL

PENALTY FOR PRIVATE USE, $300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below

FRIENDS OF DAVID KAHAUNA

P.O. BOX 1429

KAILUA-KONA, HI 96745

EXHIBIT 6

P 240 435 728 50

SENDER. Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.
1. ☐ Show to whom delivered, date, and addressee's address. †(Extra charge)†
2. ☐ Restricted Delivery †(Extra charge)†

3. Article Addressed to:
P. BIANCHI
S.X.P. AM. HI. CRUISES
604 FT. ST.
96813

4. Article Number
994 758 351

Type of Service:
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Addressee
X

6. Signature — Agent
X Colleen Nakano

7. Date of Delivery
7/6/89

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Mar. 1987 ★ U.S.G.P.O. (987-178-268) DOMESTIC RETURN RECEIPT

994 758 351

RECEIPT FOR CERTIFIED MAIL
NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

Sent to P Bianchi	
Street and No. American Hawaii Cruises	
P.O. State and ZIP Code 604 Fort St. Hon 96813	
Postage	$ .25
Certified Fee	.85
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	.90
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	$
Postmark or Date	

HONOLULU, HI JUL 6 1989 USPO

PS Form 3800, June 1985

FRIENDS OF DAVID KAHANU
P. O. BOX 1429
KANEOHE, HI 96744

No. 1403

89-105/1213

JUNE 20 1989

PAY TO THE ORDER OF AMERICAN HAWAII CRUISES $ 250.00

TWO HUNDRED FIFTY EVEN DOLLARS

Main Office
Liberty Bank
99 N King St Hon. HI 96817

FOR CAMPAIGN DONATION - RETURN

⑈001403⑈ ⑆121301057⑆ 11⑈052428⑈

34 0 4 3 5 7 2 8 5 1

9 4 0 4 3 5 7 2 8 5 2

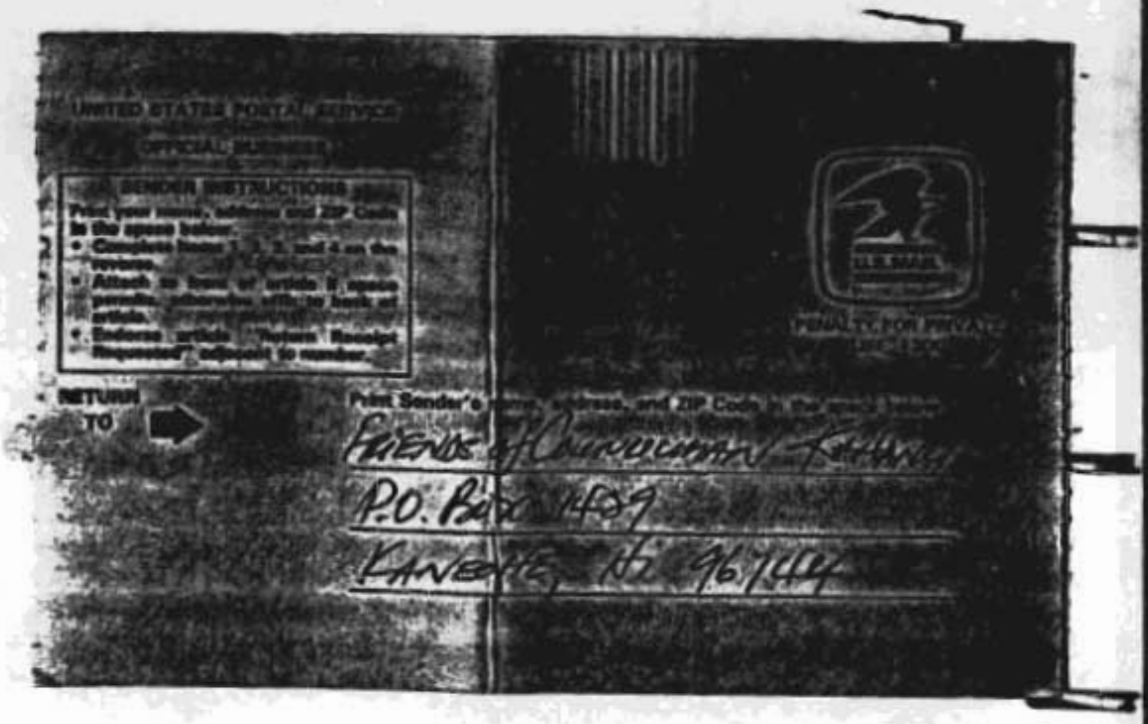
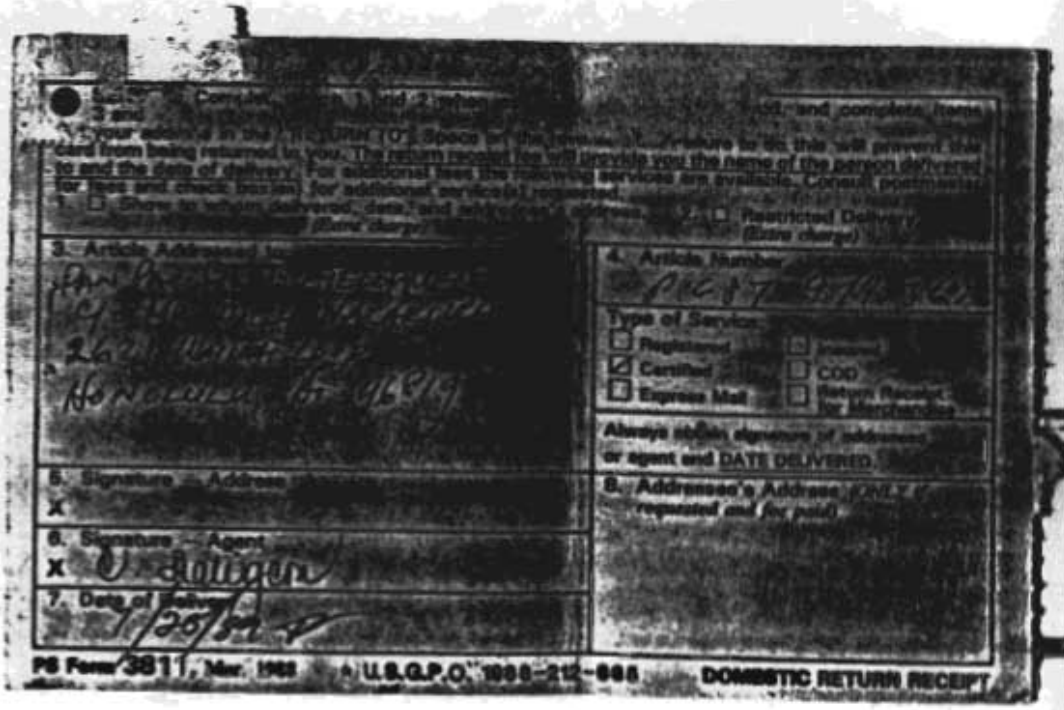


EXHIBIT 7

9 4 0 4 3 5 7 2 8 5 3



UNITED STATES POSTAL SERVICE

OFFICIAL BUSINESS

SENDER INSTRUCTIONS

Print your name, address and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.

U.S. MAIL

PENALTY FOR PRIVATE USE, $300

RETURN TO

Print Sender's name, address, and ZIP Code in the space below.

FRIENDS of DAVID KAHANE

P.O. BOX 1689

KANEOHE HI 96744

9 4 0 4 3 5 7 2 8 5 4

[redacted]

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. *(Extra charge)*
2. ☐ Restricted Delivery *(Extra charge)*

3. Article Addressed to:
AMERICAN HAWAII CRUISES
Attn: MR. LEROY HOLLEY
604 FORT STREET
HONOLULU, HI 96813

4. Article Number
P687 979 363

Type of Service:
☐ Registered ☐ Insured
☑ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature — Address
X

6. Signature — Agent
X Malani Wynne

7. Date of Delivery
7/13

8. Addressee's Address *(ONLY if requested and fee paid)*

PS Form 3811, Mar. 1988 • U.S.G.P.O. 1988-212-865 DOMESTIC RETURN RECEIPT

P687 979 363

RECEIPT FOR CERTIFIED MAIL
NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

Sent to AMERICAN HAWAII CRUISES ATTN: MR. LEROY HOLLEY	
Street and No. 604 FORT STREET	
P.O., State and ZIP Code HONOLULU HI 96813	
Postage	$ .21
Certified Fee	.85
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	.90
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	$ 2.00
Postmark or Date	

PS Form 3800, June 1985

P 404 357 285 5

FRIENDS OF DAVID KAHANU
P. O. Box 1429
Kaneohe, Hawaii 96744

A-131

59-105/1213

JUNE 19, 1989

PAY TO THE ORDER OF AMERICAN HAWAII CRUISES $ 250.00

TWO HUNDRED FIFTY EVEN DOLLARS

Queen-Ward Branch
Liberty Bank
929 Queen St. Hon, HI 96814

FOR RETURN OF CONTRIBUTION

Thomas A. Wirt

⑆121301057⑆ 11-0524 28⑈

FRIENDS OF DAVID KAHANU
P. O. Box 1429
Kaneohe, Hawaii 96744

A-129

59-105/1213

JUNE 19, 1989

PAY TO THE ORDER OF PAN PACIFIC CONSTRUCTION $ 125.00

ONE HUNDRED TWENTY-FIVE EVEN DOLLARS

Queen-Ward Branch
Liberty Bank
929 Queen St. Hon, HI 96814

FOR RETURN OF CONTRIBUTION

Thomas A. Wirt

⑆121301057⑆ 11-0524 28⑈

FRIENDS OF DAVID KAHANU
P. O. Box 1429
Kaneohe, Hawaii 96744

A-130

59-105/1213

JUNE 19, 1989

PAY TO THE ORDER OF PAN PACIFIC DEVELOPMENT $ 125.00

ONE HUNDRED TWENTY FIVE EVEN DOLLARS

Queen-Ward Branch
Liberty Bank
929 Queen St. Hon, HI 96814

FOR RETURN OF CONTRIBUTION

Thomas A. Wirt

⑆121301057⑆ 11-0524 28⑈

PAN-PACIFIC CONSTRUCTION, INC.

Pauahi Tower Suite 2350
1001 Bishop Street, Honolulu, Hawaii 96813
Phone (808) 537-2922 Fax (808) 521-6308

LETTER OF TRANSMITTAL

DATE	JOB NO
August 10, 1989	

TO Mr. Tom Woo
c/o Councilman David Kahanu
530 South King Street
Honolulu, Hawaii 96813

GENTLEMEN

WE ARE SENDING YOU ☒ Attached ☐ Under separate cover via _____ the following items

☐ Shop drawings ☐ Prints ☐ Plans ☐ Samples ☐ Specifications

☒ Copy of letter ☐ Change order ☐ _____

COPIES	DATE	NO	DESCRIPTION
1	8/3/89		Copy of letter from Green, Ning, Lilly, & Jones addressed to Mr. Willie Nakakura

THESE ARE TRANSMITTED as checked below:

☐ For approval ☐ Approved as submitted ☐ Resubmit _____ copies for approval

☒ For your use ☐ Approved as noted ☐ Submit _____ copies for distribution

☐ As requested ☐ Returned for corrections ☐ Return _____ corrected prints

☐ For review and comment ☐ _____

☐ FOR BIDS DUE _____ 19 _____ ☐ PRINTS RETURNED AFTER LOAN TO US

REMARKS _____

COPY TO _____

SIGNED Wilfred S. Nakakura

If enclosures are not as noted, kindly notify us at once.

EXHIBIT 8

9404357285 7

GREEN, NING, LILLY, & JONES

Attorneys at Law, A Law Corporation
707 Richards Street, Suite 700, Honolulu, Hawaii 96813
(808) 528-1100

Howard R. Green
Ke-ching Ning
Michael A. Lilly
Stephen A. Jones

Lynnette T. Oka

MAILING ADDRESS
P. O. Box 3439
Honolulu, Hawaii 96801

TELECOPIER
(808) 531-2435

RECEIVED
AUG - 4 1989
PAN-PACIFIC CONSTRUCTION, INC.

August 3, 1989

Mr. Willie Nakakura
President
Pan-Pacific Construction, Inc.
1001 Bishop Street, #2350
Honolulu, Hawaii 96813

Dear Mr. Nakakura:

Pursuant to our telephone conversation of August 1, 1989, this office will be advising the Federal Election Commission that the contribution made by Pan-Pacific Construction, Inc. was not a contribution by or through a foreign national. This determination was made for the following reasons: (1) Pan-Pacific Construction, Inc. is a Hawaii corporation with its principal place of business in Hawaii at 1001 Bishop Street, Suite 2650, Honolulu, Hawaii, (2) the decision to make the contribution was made by you, its president, who was born and raised in Hawaii, and (3) the money for the contribution was locally made funds.

Please call me if you have any comments or questions.

Very truly yours,

LYNNETTE T. OKA

LTO:rsh

9404357285 8

HAND DELIVERED

066 6531

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90 JUN 12 AM 9:30

KOBAYASHI, WATANABE, SUGITA, KAWASHIMA & GODA
ATTORNEYS AT LAW
HAWAII TOWER, 8th FLOOR
745 FORT STREET
HONOLULU, HAWAII 96813-3999
TELEPHONE (808) 544-8300

Kevin S.C. Chang*
Kate Feldman*
Alan M. Goda*
Lyle Y. Hosoda*
J. Douglas Ing*
Cheryl K. Kabasu*
James Kawashima*
Bert T. Kobayashi, Jr.*
John T. Komeiji*
Wray H. Kondo*
Benjamin A. Kudo*
Dale W. Lee*
Ronald Y. K. Leong*
Michael A. Lorusso*
Lee R. Smith*
Kenneth Y. Sugita*
Robert T. Takamatsu*
Jeffrey N. Watanabe*
Cynthia Winager*
Randall Y. Yamamoto*

*A Law Corporation

Jan M. L. Y. Aoki
George B. Apter
Ferdinand G. Arenza
Wendell H. Fuji
Charles W. Gall
Rosanne K. Goo
Lyle S. Hosoda
Robert K. Ishikawa
Donna Y. Kanemaru
Pamela J. Larson
Alan K. Maeda
David L. Monroy
Janeen A. Olds
Fred Troncone

OF COUNSEL:
George R. Ariyoshi
Bert T. Kobayashi, Sr.
Russell K. Koro

Facsimile: (808) 544-8399
Telex: 6502399660 MCI
MCI Mail: 2399660
ABA/Net: ABA2261

June 8, 1990

BY DHL COURIER

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Attention: Michael Troy

Re: MUR 2892
Ohbayashi Hawaii Corp.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 13 AM 11:33

Dear Mr. Troy:

This letter follows our June 7 telephone conversation.

By letter dated June 3, 1990, Ohbayashi Hawaii Corp. ("Ohbayashi") requested that the Federal Election Commission ("Commission") enter into negotiations for the purpose of achieving pre-probable cause conciliation in the above-referenced matter.

In order to minimize costs and fees, we indicated that Ohbayashi would not be submitting responses to the Commission's discovery requests. However, you stated in our June 7 telephone conversation that it will be necessary for Ohbayashi to respond to the Commission's discovery requests prior to entering into any negotiations for pre-probable cause conciliation.

The Commission's May 21, 1990 letter indicated that such response should be submitted within 15 days of receipt of the letter. Based on the above circumstances, we request a 2 week extension of time to gather information and prepare response to the Commission's discovery requests.

9404357285 9

Thank you for your consideration and courtesy in this matter. Please contact the undersigned if you have any questions or require additional information.

Very truly yours,

KEVIN S. C. CHANG
for
KOBAYASHI, WATANABE,
SUGITA, KAWASHIMA & GODA

KSCC:rkg

cc: Ohbayashi Hawaii Corporation

2404357286 0

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 15, 1990

Mr. Kevin S. C. Chang
Kobayashi, Watanabe, Sugita,
Kawashima & Goda
Hawaii Tower, Eighth Floor
745 Fort Street
Honolulu, Hawaii 96813-3889

RE: MUR 2892
Ohbayashi Hawaii Corp.

Dear Mr. Chang:

This is in response to your letter dated June 8, 1990, which we received on June 12, 1990, requesting an extension of two weeks to respond to the above captioned matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on June 27, 1990.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Jonathan Bernstein
Assistant General Counsel

9404357286 1

00C 6543

GOODSILL ANDERSON QUINN & STIFEL

ATTORNEYS AT LAW

1600 BANCORP TOWER
130 MERCHANT STREET
HONOLULU, HAWAII 96813

MAIL ADDRESS P.O. BOX 3196
HONOLULU, HAWAII 96801

FACSIMILE (808) 531-2629 TELEPHONE (808) 547-5600 TELEX 7430246 HKOD

RECEIVED
FEDERAL ELECTION COMMISSION
90 JUN 12 AM 10:02

June 7, 1990

Patty Reilly, Esq.
Office of the General Counsel
Federal Election Commission
Room 659
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2892 - Pacifico Creative Service, Inc.

Dear Ms. Reilly:

We represent Pacifico Creative Service, Inc. in this matter.

As part of the letter that we recently received from the Chairman of the Federal Election Commission informing us that the Commission had found a reason to believe Pacifico Creative Service, Inc. had violated 2 U.S.C. Section 441e, a suggestion was made that if Pacifico Creative Service, Inc. was interested in pursuing pre-probable cause conciliation, it could do so provided it was requested in writing.

This letter is intended to be such a request. We believe that this matter is appropriate for pre-probable cause conciliation and wish to enter into negotiations with your office pursuant to 11 C.F.R. Section 111.18(d).

We would therefore appreciate it if you would inform us whether you also agree. Upon hearing from you, we will be prepared to present an initial proposal for conciliation.

In making our request to enter into negotiations for pre-probable cause conciliation, we are assuming that all proceedings in MUR 2892 with respect to Pacifico Creative Service, Inc. are automatically stayed until

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 13 AM 11:33

2404357283 2

conciliation proceedings are concluded or until either Pacifico Creative Service, Inc. or your office determines that pre-probable cause negotiations are no longer fruitful. In particular, we are assuming that all matters which Pacifico Creative Service, Inc. is either allowed or required to submit to the Commission with respect to MUR 2892, e.g., submission of further legal and factual material, answers to interrogatories, production of documents, etc., have been extended pending the outcome of the pre-probable cause conciliation process.

Of course, if our assumptions are not correct, we would appreciate it if you would immediately inform us.

Very truly yours,

GOODSILL ANDERSON QUINN & STIFEL

Russell S. Kato

Russell S. Kato

RSK:mjc

2404357283

OGC 6530

PAUL, JOHNSON, ALSTON & HUNT

ATTORNEYS AT LAW A LAW CORPORATION

HONOLULU OFFICE
(808) [illegible]2
[illegible] Pacific Tower
[illegible]01 Bishop Street
Post Office Box 4438
Honolulu, Hawaii 96[illegible]-4438
[illegible]CLAW
Telex: PACLAW 634377
FAX: (808) 524-4591
FAX: (808) 528-1654

MAUI OFFICE
(808) 242-6644
101 H G E A Building
2145 Kaohu Street
Post Office Box 870
Wailuku, Hawaii 96793-0870
FAX: (808) 244-9775

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUN 12 [illegible]

June 5, 1990

VIA FAX AND U.S. MAIL

Patty Reilly, Esq.
Staff Attorney
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
90 JUN 13 AM 11:32

Re: Tetsuo and Yasuo Yasuda, MUR 2892

Dear Ms. Reilly:

As you know, we represent Tetsuo and Yasuo Yasuda in the above-entitled matter before the Federal Election Commission. We have received Ms. Elliott's letter dated May 21, 1990 advising us of, inter alia, the deadline for our response to the charges that have been made against Messrs. Yasuda and the need for a written request for an extension of time, should an extension be necessary.

Because Messrs. Yasuda reside in Japan and speak very little English (thereby making direct communication with them difficult), we request a twenty (20) day extension of the deadline to respond to Ms. Elliott's May 21, 1990 letter.

If you have any questions about our request for an extension of time, please contact Paul Alston or me.

Very truly yours,

Robyn B. Chun

ROBYN B. CHUN

RBC:lhc:1420N
cc: clients

24 4 3 3 7 2 3 3 4

HONOLULU: James T. Paul, David A. Johnson, Paul Alston, William S. Hunt, Corey Y. S. Park, Shelby Anne Floyd, Louise K. Y. Ing, Sheryl L. Nicholson, Chad Taniguchi, Ellen Godbey Carson, Robyn B. Chun, Everett S. Kaneshige, Elizabeth Kent, Mei Nakamoto, Judith L. Neustadter, Bruce S. Noborikawa

MAUI: Dennis Nixes, William M. McKeon, Joanne V. Louie

90-C 6554

GREEN, NING, LILLY, & JONES

Attorneys at Law, A Law Corporation
707 Richards Street, Suite 700, Honolulu, Hawaii 96813
(808) 528-1100

Howard R. Green
Ke-ching Ning
Michael A. Lilly
Stephen A. Jones

Lynnette T. Uka

MAILING ADDRESS
P. O. Box 3439
Honolulu, Hawaii 96801

TELECOPIER
(808) 531-2415

June 11, 1990

Ms. Lee Ann Elliott, Chairman
Federal Election Commission
Room 659
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
90 JUN 13 PM 2:21

Re: MURs 2846 and 2892
Friends of Frank Fasi

Dear Lee Ann Elliot and members of the FEC:

I am writing on behalf of Friends for Frank Fasi in response to your letter dated May 21, 1990, which we received on May 29, 1990.

The purpose of this letter is to request pre-probable cause conciliation. We believe that we requested such conciliation in our letter dated August 31, 1989, but to be certain, we reiterate the request.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 13 PM 4:04

Specifically, we hope you can address the following questions in this process:

1) Which, if any, of the contributions does the Commission deem to be that of a foreign national? behalf of the campaign, we felt that we had made appropriate judgment on this issue based upon the regulations of the Commission. Page 11 of your memoranda states that our responses did not contain elements that are deemed critical by the Commission.

2) What elements does the Commission deem critical?

3) The Commission's opinion states that "[i]n light of the foregoing, there is reason to believe respondent violated 2 U.S.C. §441e." The opinion goes on for eleven pages about the fact that the federal statute applies to local elections but there are no specific comments regarding which, if any, of the contributions that the Commission would deem to have been illegal. The campaign now and have always

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wanted to follow the law and we felt that we had specifically followed the regulations by ascertaining the status of the persons or entities making contributions and the sources of the funds. We request guidance from you.

Another issue which is rather perplexing to us is the potential impact of consolidation of the complaint against Friends for Frank Fasi with the complaints relative to other political candidates...particularly with the complaint against Citizens for Waihee. On the one hand, we desire the confidential protection that we are entitled to under the statutes and regulations; on the other hand, if the Commission will be considering evidence obtained relative to one campaign as being potentially admissible relative to the other campaign, then we have to know all of the information relative to the Citizens for Waihee. Therefore, it seems that consolidation will either result in violation of confidentiality or violation of due process or both.

We look forward to your constructive guidance.

Sincerely,

Howard R. Green

Howard R. Green

HRG:dg
cc: Linda Wong

9404357286 6

OGC 6541

GOODSILL ANDERSON QUINN & STIFEL

ATTORNEYS AT LAW

1600 BANCORP TOWER
130 MERCHANT STREET
HONOLULU, HAWAII 96813

MAIL ADDRESS: P.O. BOX 3196
HONOLULU, HAWAII 96801

FACSIMILE (808) 531 2628 | TELEPHONE (808) 547 5600 | TELEX 7430246 JEKCO

MARTIN ANDERSON
WILLIAM F. QUINN
RICHARD E. STIFEL
HUGH SHIMABUKURO
OSMIO SAKAMOTO
C. ERSKINE GAGLIANO
CONRAD M. WEBER
DAVID J. DEGLAMO
RICHARD T. SHIOTA*
ROBERT O. HITT
RONALD H. W. LUM
DAVID J. KINER
H. MITCHELL D'OLIER
JOHN B. LACY
ROBERT F. HIRANO
RAYMOND S. FUJIMOTO
RONALD K. K. SAKAMAKI
THOMAS W. WILLIAMS, JR.
MICHAEL A. SIKA
WILLIAM S. MILLER
JACQUELINE L. S. EARLE
KENNETH A. BOHN*
LANE L. EWART

RANDALL E. STEVENSON
KENNETH K. P. WONG
PATRICIA T. LEE
GARY M. SLOVIN
LISA WOODS MUNCIE
KENNETH E. HIPP
ERNEST J. T. LOO
BRUCE C. LAMON
PETER T. KAMIMURA
RUSSELL S. KATO
LARRY A. JOHNSON
STEVEN M. NAKASHIMA
VINCENT A. PIKARSKI
MICHAEL J. O'MALLEY
LAWRENCE L. TONG
MARK B. DEMARAIS
LINDA BONETTELLA LEONG
SCOTT O. LEONG
SCOTT A. MARUKANE
LEIGHTON J. H. S. TUTIN
CHARLES J. CHANG
BARBARA A. PETRUS

CYNTHIA MAGNUSSON
CARL J. ROLLAND, JR.
MIKI OKUMURA
MARK A. ITO
AUDREY E. [illegible]
DONNA A. TAMAKI
GREGORY R. [illegible]
RICHARD E. MERRITANI
CORINNE S. TEE
ALAN S. FUJIMOTO
WALTER C. DAWSON
DAVID W. SHERMAN
R. CLAYTON WELCH*
MARK E. BECKTENWALD
GAIL O. AYABE
LORI E. AQUINO
MARGARET E. MARUNAGA*

DALE E. [illegible]
LINDALEE E. PARM
BRYAN C. YEE
P. SCOT CATALANI
MARGARET C. JENKINS
[illegible] A. BRUN
[illegible] J. NAKANISHI
CECILIA C. SIERRA
LAURA ELLEN MARRACE
JEFFREY S. PIPER
ROY JOHN TROY
LYNNE TAMARA TOYOKUNI
KEITH A. CARMITHERS
MICHAEL F. NAITOKAS
KELLIE M. N. SERIYA
HENRY T. NAKAMITO
RITY Y. LEE
DONALD R. HIDANI

COUNSEL
RANDALL W. ROTH
E. LAURENCE GAY
ROBERT J. HACKMAN

OF COUNSEL
JAMES M. RICHMOND
JOHN P. RUSSELL
H. RAUSI KERWELL
WALTER E. BLISS
PAUL M. ANDERSON
MARSHALL M. GOODSILL

*KONA OFFICE
P. O. BOX [illegible]
KAILUA-KONA, HAWAII [illegible]
PHONE (808) [illegible]
FACSIMILE (808) [illegible]

June 7, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
90 JUN 13 AM 11:33
OFFICE OF GENERAL COUNSEL

Patty Reilly, Esq.
Office of the General Counsel
Federal Election Commission
Room 659
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2892 - Grosvenor International (Hawaii) Limited

Dear Ms. Reilly:

We represent Grosvenor International (Hawaii) Limited in this matter.

As part of the letter that we recently received from the Chairman of the Federal Election Commission informing us that the Commission had found a reason to believe Grosvenor International (Hawaii) Limited had violated 2 U.S.C. Section 441e, a suggestion was made that if Grosvenor International (Hawaii) Limited was interested in pursuing pre-probable cause conciliation, it could do so provided it was requested in writing.

This letter is intended to be such a request. We believe that this matter is appropriate for pre-probable cause conciliation and wish to enter into negotiations with your office pursuant to 11 C.F.R. Section 111.18(d).

We would therefore appreciate it if you would inform us whether you also agree. Upon hearing from you, we will be prepared to present an initial proposal for conciliation.

In making our request to enter into negotiations for pre-probable cause conciliation, we are assuming that all proceedings in MUR 2892 with respect to Grosvenor

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International (Hawaii) Limited are automatically stayed until conciliation proceedings are concluded or until either Grosvenor International (Hawaii) Limited or your office determines that pre-probable cause negotiations are no longer fruitful. In particular, we are assuming that all matters which Grosvenor International (Hawaii) Limited is either allowed or required to submit to the Commission with respect to MUR 2892, e.g., submission of further legal and factual material, answers to interrogatories, production of documents, etc., have been extended pending the outcome of the pre-probable cause conciliation process.

Of course, if our assumptions are not correct, we would appreciate it if you would immediately inform us.

Very truly yours,

GOODSILL ANDERSON QUINN & STIFEL

Russell S. Kato

Russell S. Kato

RSK:mjc

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00C 6540

GOODSILL ANDERSON QUINN & STIFEL

ATTORNEYS AT LAW

1600 BANCORP TOWER
130 MERCHANT STREET
HONOLULU, HAWAII 96813

MAIL ADDRESS P.O. BOX 3196
HONOLULU, HAWAII 96801

FACSIMILE (808) 531-2628 TELEPHONE (808) 547-5600 TELEX 7430146 JEKCO

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM 12

June 7, 1990

Patty Reilly, Esq.
Office of the General Counsel
Federal Election Commission
Room 659
999 E Street, N.W.
Washington, D.C. 20463

90 JUN 13 AM 11:33
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Re: MUR 2892 - Japan Air Lines Co., Ltd.

Dear Ms. Reilly:

We represent Japan Air Lines Co., Ltd. in this matter.

As part of the letter that we recently received from the Chairman of the Federal Election Commission informing us that the Commission had found a reason to believe Japan Air Lines Co., Ltd. had violated 2 U.S.C. Section 441e, a suggestion was made that if Japan Air Lines Co., Ltd. was interested in pursuing pre-probable cause conciliation, it could do so provided it was requested in writing.

This letter is intended to be such a request. We believe that this matter is appropriate for pre-probable cause conciliation and wish to enter into negotiations with your office pursuant to 11 C.F.R. Section 111.18(d).

We would therefore appreciate it if you would inform us whether you also agree. Upon hearing from you, we will be prepared to present an initial proposal for conciliation.

In making our request to enter into negotiations for pre-probable cause conciliation, we are assuming that all proceedings in MUR 2892 with respect to Japan Air Lines Co., Ltd. are automatically stayed until

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conciliation proceedings are concluded or until either Japan Air Lines Co., Ltd. or your office determines that pre-probable cause negotiations are no longer fruitful. In particular, we are assuming that all matters which Japan Air Lines Co., Ltd. is either allowed or required to submit to the Commission with respect to MUR 2892, e.g., submission of further legal and factual material, answers to interrogatories, production of documents, etc., have been extended pending the outcome of the pre-probable cause conciliation process.

Of course, if our assumptions are not correct, we would appreciate it if you would immediately inform us.

Very truly yours,

GOODSILL ANDERSON QUINN & STIFEL

Russell S. Kato

Russell S. Kato

RSK:mjc

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RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90 JUN 13 AM 11:48

GOODSILL ANDERSON QUINN & STIFEL

ATTORNEYS AT LAW

1600 BANCORP TOWER
130 MERCHANT STREET
HONOLULU, HAWAII 96813

MAIL ADDRESS: P.O. BOX 3196
HONOLULU, HAWAII 96801

FACSIMILE (808) 531-3628 TELEPHONE (808) 547-5600 TELEX 7430246 (ITT)

16584/67847
CERTIFIED MAIL
RETURN RECEIPT
REQUESTED

June 6, 1990

Patty Reilly, Esq.
Office of the General Counsel
FEDERAL ELECTION COMMISSION
Room 659
999 E Street, N.W.
Washington, D. C. 20463

Re: MUR 2892
Azabu U.S.A. Corporation

Dear Ms. Reilly:

We represent Azabu U.S.A. Corporation ("Azabu") in the above-referenced matter and acknowledge receipt, on May 29, 1990, of a letter dated May 21, 1990 from the Chairman of the Federal Election Commission informing us that the Commission has found that there is reason to believe that Azabu has violated 2 U.S.C. §441e.

Azabu is interested in pursuing pre-probable cause conciliation and, as suggested in the Chairman's letter, on behalf of Azabu, we hereby respectfully request that we pursue pre-probable cause conciliation. We believe that this would be appropriate and wish to enter into negotiations with your office pursuant to 11 C.F.R. §111.18(d).

Please inform us if you agree that this matter is appropriate for pre-probable cause conciliation and, upon receipt of your letter, we will prepare to formulate and present an initial proposal for conciliation.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 13 AM 11:33

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With the making of this request to pursue pre-probable cause conciliation, we assume that all proceedings in MUR 2892 with respect to Azabu are automatically stayed until conciliation proceedings are concluded or until either Azabu or your office determines that continuing any pre-probable cause conciliation negotiations are no longer fruitful. Specifically, we assume that all matters which Azabu is either allowed or required to submit to the Commission with respect to MUR 2892, e.g., submission of further legal and factual material, answers to interrogatories, production of documents, etc., have been extended pending the outcome of the pre-probable cause conciliation process.

Of course, if any of our assumptions are not correct, we would appreciate it if you would immediately inform us.

Very truly yours,

Ray Iwamoto

Raymond S. Iwamoto

RSI:ek
cc: Ms. Avelene Yee

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RECEIVED
FEDERAL ELECTION COMMISSION
ROOM

GOODSILL ANDERSON QUINN & STIFEL

ATTORNEYS AT LAW

1600 BANCORP TOWER
130 MERCHANT STREET
HONOLULU, HAWAII 96813

MAIL ADDRESS: P.O. BOX 3196
HONOLULU, HAWAII 96801

FACSIMILE (808) 531-2628 TELEPHONE (808) 547-5600 TELEX 7430246 JEKID

16584/67847

June 6, 1990

CERTIFIED MAIL
RETURN RECEIPT
REQUESTED

Patty Reilly, Esq.
Office of the General Counsel
FEDERAL ELECTION COMMISSION
Room 659
999 E Street, N.W.
Washington, D. C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 13 AM 11:33

Re: MUR 2892
Azabu Realty, Inc.

Dear Ms. Reilly:

We represent Azabu Realty, Inc. ("Azabu Realty") in the above-referenced matter and acknowledge receipt, on May 29, 1990, of a letter dated May 21, 1990 from the Chairman of the Federal Election Commission informing us that the Commission has found that there is reason to believe that Azabu Realty violated 2 U.S.C. §441e.

Azabu Realty is interested in pursuing pre-probable cause conciliation and, as suggested in the Chairman's letter, on behalf of Azabu Realty, we hereby respectfully request that we pursue pre-probable cause conciliation. We believe that this would be appropriate and wish to enter into negotiations with your office pursuant to 11 C.F.R. §111.18(d).

Please inform us if you agree that this matter is appropriate for pre-probable cause conciliation and, upon receipt of your letter, we will prepare to formulate and present an initial proposal for conciliation.

With the making of this request to pursue pre-probable cause conciliation, we assume that all proceedings in MUR 2892 with respect to Azabu Realty are automatically stayed until conciliation proceedings are concluded or until either Azabu Realty or your office determines

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that continuing any pre-probable cause conciliation negotiations are no longer fruitful. Specifically, we assume that all matters which Azabu Realty is either allowed or required to submit to the Commission with respect to MUR 2892, e.g., submission of further legal and factual material, answers to interrogatories, production of documents, etc., have been extended pending the outcome of the pre-probable cause conciliation process.

Of course, if any of our assumptions are not correct, we would appreciate it if you would immediately inform us.

Very truly yours,

Ray Iwamoto

Raymond S. Iwamoto

RSI:ek
cc: Ms. Avelene Yee

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OGC 6535

SAAB-SCANIA

Saab-Scania of America, Inc.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 13 AM 11:33

June 7, 1990

SENT CERTIFIED MAIL NO. P 164 286 447

Patty Reilly, Esq.
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2892
Saab-Scania of America, Inc.

Dear Ms. Reilly:

Enclosed please find Saab-Scania of America, Inc.'s Response to Interrogatories and Requests for Production of Documents. If you have any questions, please call.

Very truly yours,

John P. Clark (KRG)

John Phelps Clark
Vice President and
General Counsel

JPC:krg

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Saab Drive
P.O. Box 697
Orange, CT 06477

Telephone
203 795-5671

Telex
221 016

Facsimile
203 795-4451

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Saab-Scania of America, Inc. MUR 2892

1. State your name, local address, business, and where you are incorporated.

2. Identify all officers and directors.

3. Identify all management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The Commission requests the following documents: all election reports required to be filed with any government agency.

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Federal Election Commission
Response to Interrogatories and Requests
for Production of Documents

MUR 2892

---

1. Saab-Scania of America, Inc.
   Saab Drive, P.O. Box 697
   Orange, CT 06477

2. Current Officers and Directors of Saab-Scania of America, Inc. are Exhibit A, attached hereto.

3. Management is identified in the officers listed in Exhibit A.

4. Saab-Scania of America, Inc. is a wholly-owned subsidiary of Saab-Scania Holdings U.S., Inc., a Delaware Corporation.

5. August 24, 1987, $2,000.00, Friends for Fasi, c/o John E. Hirten
   2999 Kalakaua Ave.
   Apt. 702
   Honolulu, HI 96815

   No other political contributions to any other organization have ever been made by Saab-Scania of America, Inc. to the best of respondent's information and belief.

6. Persons involved in making the contribution were:

   (a) Rolf Sundeman, Vice President of Bus Operations, Saab-Scania of America, Inc. (August 24, 1987).

   Mr. Sundeman retired on July 24, 1988, and returned to Sweden.

   (b) John Phelps Clark, Vice President, General Counsel and General Manager of Scania opeations for Saab-Scania of America, Inc. from April 1, 1987.

7. Funds were provided by U.S. Bus Manufacturing and Sales operations. No funds were provided directly or indirectly by any foreign national.

8. Saab-Scania of America, Inc. maintains no political action committee.

9. Saab-Scania of America, Inc. maintains no "pool of funds specified for election activity", or any other funds for any political activity activity of any kind whatsoever.

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10. The person answering these questions is:

John Phelps Clark
Vice President and General Counsel
With Saab-Scania of America, Inc. since April 1986 and
General Manager of Scania Bus and Truck operations from April 1, 1987.

The only reports filed with any agency are the reports I filed with Patty Reilly, Esq. of the Federal Election Commission on June 27, 1989 a copy of which is attached hereto as Exhibit B.

I hereby certify that the foregoing answers are true and complete to the best of my knowledge and belief.

Dated at Orange, Connecticut this 6th day of June, 1990.

John Phelps Clark
Vice President and
General Counsel of
Saab-Scania of America, Inc.

STATE OF CONNECTICUT)
: ss: Orange, CT
COUNTY OF NEW HAVEN)

Subscribed and sworn to before me this 6th day of June, 1990.

Notary Public

My Commission Expires March 31, 1991

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Exhibit "A"

DIRECTORS

David J. Herman (Chairman)
Allan Smith
John Phelps Clark
Kenneth F. Adams
George Karnsund
Robert J. Sinclair

9 4 0 4 3 5 7 2 8 7 9

CORPORATE OFFICERS

NAME & ADDRESS	TITLE
Robert J. Sinclair 68 Bridle Trail Fairfield, CT 06430	President and Chief Executive Officer
Kenneth F. Adams 28 High Ridge Road Brookfield Ctr., CT 06805	Vice President of Finance and Administration
John Phelps Clark 299 Colonial Road Guilford, CT 06437	Vice President, Secretary and General Counsel
Douglas F. Haas 467 Plains Road Milford, CT 06460	Treasurer
William F. Murray 360 Old MT Rd. Kenoesow, Georgia 30061	Regional Vice President
Lawrence W. Nay 97 South End Avenue Durham, CT 06422	Regional Vice President
Carmen A. Gautille 419 LaQuinta Ct. Danville, CA 94526	Regional Vice President
Robert E. Stogsdill 17 Hickory Lane Woodbridge, CT 06525-1433	Regional Vice President
Norman E. DeFusco 219 Cloverdale Lane Schaumburg, IL 60194	Regional Vice President
William S. Kelly 20 Sandpiper Crescent Milford, CT 06460	Vice President - Sales

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SAAB-SCANIA

Saab-Scania of America, Inc.

"EXHIBIT B"

June 27, 1989

Patty Reilly, Esq.
Federal Election Commission
Washington, D.C. 20463

Re: MVR 2892
Saab-Scania of America, Inc.

Dear Ms. Reilly:

Enclosed please find Saab-Scania of America, Inc.'s Statement of Designation of Counsel together with a copy of all correspondence from our files relating to a campaign contribution to the "Friends for Fasi" in the amount of $2,500. It is my recollection that this contribution was made with advice of local counsel in Honolulu, although he might not have considered applicable provisions of Federal Election law. I do not recall considering any such matters as general counsel for Saab-Scania of America, Inc. or as general manager of our bus manufacturing operation at that time.

Saab-Scania of America, Inc. is a Connecticut corporation, all of the stock of which is held by Saab-Scania Holdings Corp., a Delaware corporation. All of the shares of various classes of Saab-Scania Holdings Corp. stock are held by Saab-Scania AB or its divisions or wholly-owned subsidiaries, all of which are Swedish corporations.

I do not believe that any of this material need be supplied under oath, but would be happy to do so, if you so desire.

Very truly yours,

John Phelps Clark
Vice President and
General Counsel

JPC:kr
Enclosures

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 2892

NAME OF COUNSEL: JOHN PHELPS CLARK

ADDRESS: BOX 697, SAAB DRIVE
ORANGE, CT. 06477

TELEPHONE: 203-795-2034 (OFFICE)
203-453-4498 (HOME)

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

6/27/89
Date

Signature
Vice Pres. & Gen'l Counsel

RESPONDENT'S NAME: SAAB-SCANIA OF AMERICA, INC

ADDRESS: BOX 697, SAAB DR.
ORANGE, CT. 06477

HOME PHONE:

BUSINESS PHONE: 203-795-2034

9404357283 2

SAAB-SCANIA

Saab-Scania of America, Inc.

April 18, 1988

Campaign Spending Commission
335 Merchant Street, Room 215
Honolulu, Hawaii 96813

Re: Statement of Contributions

Gentlemen:

Please be advised that our Company, Saab-Scania of America, Inc. made a contribution to the "Friends for Fasi" in the amount of $2,000.00 by check dated August 25, 1987. Complete documentation for this transaction is enclosed.

Please accept my apologies for missing your April 4, 1988 filing date, but the request for information got mislaid in our inter-office mail. If there are any penalties for this late filing, please get in touch with me as soon as possible.

Very truly yours,

John Phelps Clark
Vice President and
General Counsel

JPC:kr
Enclosures

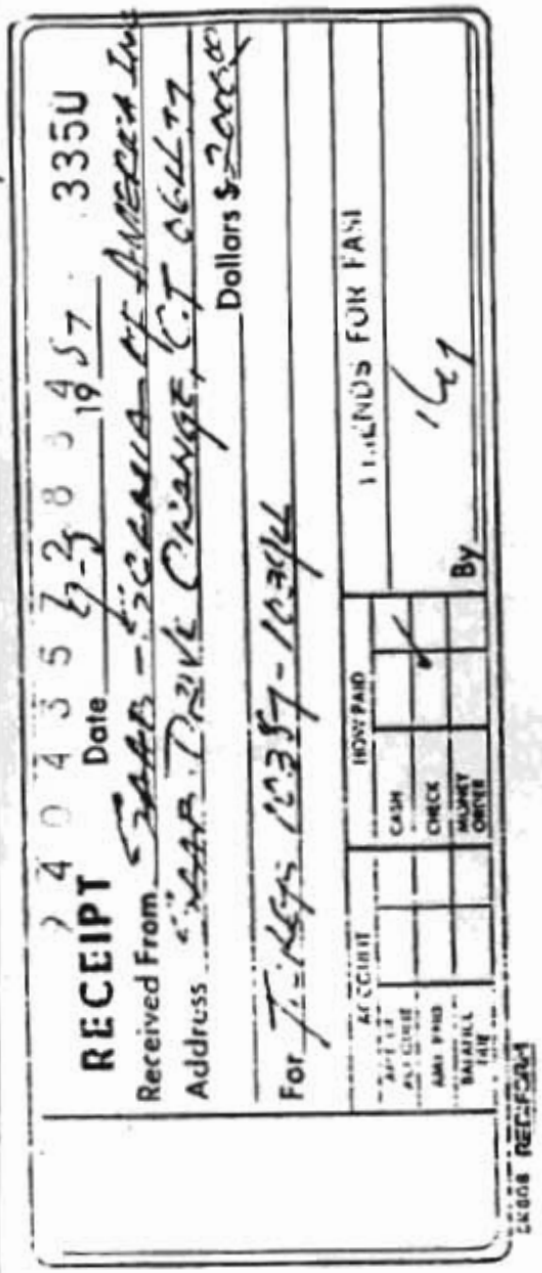
9 4 0 4 3 5 7 2 8 8 3

Saab Drive
PO Box 697
Orange, CT 06477

Telephone
203 795-5871

Telex
221 016

Facsimile
203 795-4451


RECEIPT
Date 6-3 1987
Received From
Address
Dollars
For
ACCOUNT
HOW PAID
CASH
CHECK
MONEY ORDER
FRIENDS FOR FAN
By

To You, Friend, Aloha.

This is to say thanks. Thanks for your contribution in helping to make my recent fundraiser the most successful and the most satisfying ever. It gave me the chance to see and shake hands with so many friends. Words of encouragement, support and praise made me feel that the 37 years I've given to politics were and still are a privilege.

I will continue to justify your faith in me.
I will act to help meet the needs of our people and help make our Community the best in the world.
Warm personal regards.

Sincerely,

An Evening with the Mayor

SAAB-SCANIA OF AMERICA, INC.

CHECK REQUEST

TO: Accounts Payable Department

FROM: Rolf Sundeman

PAYEE: "Friends For Fasi"

c/o John E. Hirten

2999 Kalakaua Avenue, Apt. 702

Honolulu, Hawaii 96815

DATE: August 24, 1987

AMOUNT: $ 2,000.00

A/C # 3285-02-900-61

APPROVED BY: R. Sundeman
[Rolf Sundeman]

EXPLANATION

Contribution to "Friends For Fasi" ...

Frank F. Fasi, Mayor, City & County of Honolulu

ACCOUNTS PAYABLE: PLEASE RUSH

CHECK AND LETTER WILL BE SENT
FEDERAL EXPRESS ON AUGUST 25

Thanks
Roy.

9 4 0 4 3 5 7 2 8 3 5

SAAB-SCANIA
Saab-Scania of America, Inc.

VENDOR NUMBER
02-0FR1003726

MO. DA. YR.	CHECK NUMBER
08 25 87	029246

INVOICE DATE MO. DA. YR.	INVOICE NUMBER	BATCH VOUCHER NUMBER	GROSS AMOUNT	DISCOUNT AMOUNT	NET AMOUNT
08 24 87	CONTRIBUTION	08442 - 04591	2,000.00		2,000.00
			$2,000.00¢		
			2,000.00		2,000.00

⑆ 0 4 0 4 3 5 7 8 ⑈ 8 6

SAAB-SCANIA
Saab-Scania of America, Inc.
Saab Drive Orange, CT 06477

No. 029246

$1-10
111

$2,000.00¢

MO. DA. YR.	CHECK NUMBER
08 25 87	029246

UNION TRUST COMPANY
NEW HAVEN, CONNECTICUT

PAY TO THE ORDER OF:
"Friends For Fasi"
c/o John E. Hirten
2999 Kalakaua Avenue, Apt. 702
Honolulu, Hawaii 96815

AMOUNT OF CHECK
**********2,000.00

TWO SIGNATURES REQUIRED FOR AMOUNTS IN EXCESS OF $1,000.00

⑈029246⑈ ⑆011100106⑆ 00 745 236 5⑈

7G298N • 1099-0420-0

Sender's Federal Express Account Number

From (Your name)

Rolf Sundqvist

Your Phone Number (only if requested)

(203) 799-1336

Company

SAAB-SCANIA (Bennie Bus Division)

Department/Floor No.

Street Address

SAAB DRIVE

City

ORANGE

State

CT

ZIP Required For Correct Invoicing

0 6 4 7 7

To (Recipient's Name)

Mr. John E. Hirten

Recipient's Phone Number (only if requested)

( )

Company

Department/Floor No.

Street Address (Box or P.O. Number or P.O. + Zip Codes Will Delay Delivery And Result In Extra Charges)

2999 Kalakaua Avenue, Apt. 300

City

Honolulu

State

Hawaii

ZIP Required Street Address Zip Required

96815

YOUR BILLING REFERENCE INFORMATION (FIRST 24 CHARACTERS WILL APPEAR ON INVOICE)

PAYMENT: Bill Sender / Bill Recipient's FedEx Acct. No. / Bill 3rd Party FedEx Acct. No. / Bill Credit Card / Cash

HOLD FOR PICK-UP AT THE FEDERAL EXPRESS LOCATION: Street Address (See Service Guide or Call 800-238-5355)

City

State

ZIP + Zip Code of Street Address Required

SERVICES — CHECK ONLY ONE BOX

1 ☐ PRIORITY 1 — Overnight Delivery using Your Packaging

☐ PRIORITY 1 LETTER — Your Letter

OVERNIGHT DELIVERY — USING OUR PACKAGING

2 ☐ Courier-Pak Overnight Envelope*

3 ☐ Overnight Box A ☐

4 ☐ Overnight Tube B ☐

* Declared Value Limit $100

STANDARD AIR

5 ☐ Delivery not later than second business day

SERVICE COMMITMENT

DELIVERY AND SPECIAL HANDLING — CHECK SERVICES REQUIRED

1 ☐ HOLD FOR PICK-UP

2 ☐ INSIDE DELIVERY

3 ☒ DELIVER SATURDAY

4 ☐ DANGEROUS GOODS

5 ☐ CONSTANT SURVEILLANCE SERVICE (CSS)

6 ☐ DRY ICE ____ Lbs.

7 ☐ OTHER SPECIAL SERVICE ____

8 ☐

9 ☐ SATURDAY PICK-UP

10 ☐

Packages	Weight	Value Declared Value (See right)	Check Box
1	LBS		
	LBS		
	LBS		
	LBS		
Total 1	Total	Total	

Received At: 1 ☐ Regular Stop 2 ☐ On-Call Stop 3 ☐ Drop Box 4 ☐ B.S.C. 5 ☐ Station

Federal Express Corp. Employee No.

Date/Time For Federal Express Use

Signature authorizes Federal Express to deliver this shipment without obtaining delivery signature and shall indemnify and hold harmless Federal Express from any claims resulting therefrom.

Release Signature

YOUR DECLARED VALUE

DAMAGE OR LOSS

We are liable for no more than $100 per package or the amount of actual loss or damage, unless you let us know a higher Declared Value in advance and accepted higher value rate in the event of a claim. We charge 30¢ for each additional $100 of declared value up to the maximum shown in our Service Guide. Declared value restrictions are shown on the back of the Sender's Copy of this waybill. We make no expressed or implied warranties.

DELAY

There is always a risk of late delivery or non-delivery in the event of a late delivery Federal Express will, at your request and with some limitations, refund of transportation charges paid. See back of Sender's Copy of this waybill for further information.

CONSEQUENTIAL DAMAGES

We will not be responsible or liable for any loss or damage resulting from delay, non-delivery or damage to a package, except as noted above. This includes loss of sales, income, expected profits, attorney fees and other costs, but is not limited to these items. Such damages are called "consequential damages."

DO NOT SHIP CASH OR CURRENCY

Federal Express Use

Base Charges

Declared Value Charge

Origin Agent Charge

Other

Total Charges

PART #100301 FSC-S-791-1000 REVISION DATE 10/88 PRINTED U.S.A. GBF2

SENDER'S COPY/RETAIN FOR TRACE PURPOSES

CAMPAIGN SPENDING COMMISSION
335 MERCHANT STREET, ROOM 218
HONOLULU, HAWAII 96813

JACK M. H. GONZALES
EXECUTIVE DIRECTOR

March 15, 1988

MEMORANDUM

TO: ALL CORPORATIONS, COMPANIES, & ORGANIZATIONS WHO HAVE MADE CONTRIBUTIONS TO CANDIDATES

FROM: THE CAMPAIGN SPENDING COMMISSION

RE: THE FILING OF STATEMENT OF CONTRIBUTIONS WITH THE COMMISSION

9 4 0 4 3 5 7 2 8 8 8

According to our records, your corporation or organization has contributed an aggregate of more than $1,000.00 to candidate committees. Pursuant to the Hawaii State Campaign Spending Law, any company or organization who make direct contributions in aggregate of more than $1,000.00 per election to candidate committees shall submit a STATEMENT OF CONTRIBUTIONS to the Campaign Spending Commission. This statement of contributions is a list of candidates your organization donated to. The list may be submitted on company stationary and shall consist of the date, the name of the candidate and the amount of each contribution.

This statement shall cover the period from January 1, 1987 through December 31, 1987 and shall be submitted to the Campaign Spending Commission office by April 4, 1988 by 4:30pm. If you are on the outer islands you may file the report at your county clerk's office.

Enclosed is a copy of the due dates for the election year 1988. If you make contributions during a reporting period, (PrePrimary, PostPrimary, PreGeneral, PostGeneral) the statement of contributions is due on the reporting deadline date for that period. If you do not make contributions during a specific reporting period no statement is due until you make subsequent contributions during the next reporting period.

If you have any questions please contact our office at 548-5411 or if you are on the outer islands please use our toll free number by dialing the operator and asking for Enterprise 5406.

John E. Hirten
2999 Kalakaua Avenue, Apt. 702
Honolulu, Hawaii 96815

Copy
John Clark.
O.K.
OLS 9-22-87

September 1, 1987

Mr. Rolf Sundeman
Vice President & General Manager
Scania Bus Division
Saab-Scania of America, Inc.
Saab Drive
P. O. Box 697
Orange, Connecticut 06477

Dear Rolf:

The Mayor and I are deeply appreciative of your support and thank you for purchasing tickets for his fundraiser held on August 29, even though you were not able to make the event. For your information, it was a very successful evening.

Sincerely,

John

JOHN E. HIRTEN

cc: Mayor Frank F. Fasi

RECEIVED
SEP 04 1987
SCANIA
DIVISION

9404357289

REPORTING DEADLINES FOR PACS, POLITICAL PARTIES & UNIONS FOR THE 1988 ELECTIONS

H.R.S.	DATE	REPORTS
Sec. 11-194		Organizational Report This report must be filed within ten days from the date the committee receives any contribution in the aggregate of more than $100 or makes any expenditure.
Sec. 11-212(a)	September 2, 1988	Close books for the Pre-Primary Disclosure Report.
Sec. 11-212(a)	September 2, 1988	Pre-Primary Disclosure Report due. This report covers the period from January 1, 1987 or if you are a continuing committee from January 1, 1988 through September 2, 1988.
	September 17, 1988	***** PRIMARY ELECTION*** (Close books for the Post-Primary Disclosure Report)**
Sec. 11-213(a)	October 7, 1988	Post-Primary Disclosure Report due. This report covers the period from September 3, 1988 through September 17, 1988.
Sec. 11-212(a)	October 24, 1988	Close books for the Pre-General Disclosure Report.
Sec. 11-212(a)	October 25, 1988	Pre-General Disclosure Report due. This report covers the period from September 18, 1988 through October 24, 1988.
	November 8, 1988	*** GENERAL ELECTION *** (Close books for the Post-General Disclosure Report)
Sec. 11-213(b)	December 8, 1988	Post-General Disclosure Report due. This report covers the period from October 25, 1988 through November 8, 1988.

9404357289 0

H.R.S.	DATE	REPORTS
Sec. 11-213	December 31, 1988	Close books for the Supplemental Disclosure Report.
Sec. 11-213	January 30, 1989	Supplemental Disclosure Report due. This report covers the period from November 9, 1988 through December 31, 1988.
Sec. 11-213	June 30, 1989	Close books for Supplemental Disclosure Report.
Sec. 11-213	July 31, 1989	Supplemental Disclosure Report due. This report covers the period from January 1, 1989 through June 30, 1989.
Sec. 11-213	December 31, 1989	Close books for Supplemental Disclosure Report.
Sec. 11-213	January 30, 1990	Supplemental Disclosure Report due. This report covers the period from July 1, 1989 through December 31, 1989.

9404357289 1

SCANIA
Saab-Scania of America, Inc.

August 24, 1987

Mr. John E. Hirten
2999 Kalakaua Avenue, Apt. 702
Honolulu, Hawaii 96815

Dear John:

Thank you very much for your letter dated July 29, 1987. Sorry that this answer comes a bit late due to some important people being out of the office.

Enclosed please find a check in the amount of $2,000.00 payable to "Friends For Fasi."

We are, unfortunately, only able to support your program with $2,000.00 due to constraints mandated by Hawaiian law which was recently found out through our law firm in Honolulu. We are sure you understand that this check, therefore, is the only contribution we are able to make.

As I am not able to participate myself, please use the tickets at your discretion.

Sincerely,

Rolf Sundeman
Vice President & General Manager

/cb

Enclosures

ucc: J. Clark
R. Sinclair
G. Agres
K. Adams
B. Shipman

7 4 0 4 3 5 7 2 8 9 2

Saab Drive
PO Box 697
Telephone
203 795-1326
Telex
220 649
Facsimile
203 795-9574

John E. Hirten
2999 Kalakaua Avenue, Apt. 702
Honolulu, Hawaii 96815

July 29, 1987

Mr. Rolf Sundeman
Vice President & General Manager
Scania Bus Division
Saab-Scania of America, Inc.
Saab Drive
P. O. Box 697
Orange, Connecticut 06477

Dear Rolf:

It was good talking to you last week. As I mentioned, the major fundraiser for the re-election of Frank F. Fasi as Mayor of the City and County of Honolulu will be held on Saturday, August 29, 1987, from 6:00 to 8:00 p.m. at the Blaisdell Center Exhibition Hall here in Honolulu. It will be an aloha (casual) attire event with entertainment, beverages, heavy pupus, and an opportunity to meet the Mayor.

As you know, I strongly believe in the programs and projects that we have developed and implemented under Mayor Fasi's administration. Therefore, I am particularly anxious to see our team remain intact another four years so that we can continue on our progressive course. The purchase of your quiet buses are a major part of his many accomplishments.

I am enclosing 10 books of tickets at $250 per ticket. Please make your check payable to "Friends For Fasi" and send it to me along with the ticket stubs in the enclosed envelope. If you are able to attend yourself, it would give us great pleasure to see you again. Also, if you wish to have me distribute your tickets to potential Saab-Scania customers, I would be pleased to do so.

I appreciate your understanding and thank you for your support in this matter. If you have any questions, give me or Joe a call.

Sincerely,

John

JOHN E. HIRTEN

Enclosures

9 4 0 4 3 5 7 2 8 9 3

CAMPAIGN SPENDING COMMISSION
335 MERCHANT STREET, ROOM 310
HONOLULU, HAWAII 96813

JACK M. K. GONZALES
EXECUTIVE DIRECTOR

April 15, 1988

MEMORANDUM

TO: CORPORATIONS, COMPANIES & ORGANIZATIONS
FROM: CAMPAIGN SPENDING COMMISSION
RE: VERIFICATION OF POLITICAL CONTRIBUTIONS

Pursuant to Hawaii Revised Statutes 11-191(6)(E) any corporation, company or organization who contributes more than $1,000 in aggregate contributions per election shall file a statement of contributions with the Commission. A letter of request for this statement was sent out March 15, 1988 and as of this date the Commission has not received a response from your corporation. Therefore, to help facilitate complience with this law, a statement of verification is attached for your acknowledgment. According to our records the following candidates have received contributions from you. If this is in accordance with your records, please sign and date the verification statement attached and return it to our office. If our records are incomplete or inaccurate please file a statement of contributions indicating the correct information.

If you have any questions please contact Dick Belding at our office at your convenience at 548-5411 or if you are on the outer islands please use our toll free number by dialing the operator and asking for Enterprise 5406.

9404357289 4

VERIFICATION OF CONTRIBUTIONS

I verify that to the best of my knowledge, our corporation, company or organization has made no other candidate contributions accept to the following candidates in the amounts indicated on the attached records.

Authorized Signature, Title

Date

9 4 0 4 3 5 7 2 8 9 5

Campaign Spending Commission
AGGREGATE CONTRIBUTIONS OVER $100
File Display

Candidate:FRANK F. FASI

Name: SAAB-SCANIA OF AMERICA, INC.

CODE:2

DATE	AMOUNT	CASH	DESCRIPTION
09/08/87	2000.00	Y	
/ /	0.00		
/ /	0.00		
/ /	0.00		
/ /	0.00		

CUM. TOTAL TO DATE: 2000.00
PRIMARY ELECTION TOTAL: 2000.00
GENERAL ELECTION TOTAL: 0.00

Continue (Y/N?) N

9 4 0 4 3 5 7 2 8 9 6

ATTORNEYS AT LAW

Ikazaki
Devens
Lo
Youth
&Nakano

Suite 1600 Central Pacific Plaza
220 South King Street
Honolulu, Hawaii 96813
Telephone (808) 521-1456
Cable Address "Whiteacre"
Fax (808) 538-3289

* Herbert T. Ikazaki
* Paul Devens
* Richard C. Lo
* Wilfred H. C. Youth
* James A. Nakano
* Russell K. Saito

Paula Devens
James H. Q. Lee
Thomas J. Wong
John T. Hoshibata

Stanley L. Chung
Caron M. Inagaki
Harry Y. Oda
Ann S. Isobe

*A Law Corporation

90 JUN 13 AM 11:33
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

June 7, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Federal Election Commission
999 E. Street N. W.
Washington, D. C. 20463

Re: MUR 2892
Kintetsu International Express
(USA), Inc.

Gentlemen:

This communication is in response to your communication of May 21, 1990 which was received by our office on May 29, 1990. Your communication seeks responses to interrogatories and any other statement that we herewith submit in order to alleviate any further protraction of the problem.

We enclose pursuant to your request responses to your interrogatories.

It is our client's desire to bring the matter to a quick resolution. For such purpose, it is desirous to enter into conciliation negotiations.

However, we think the matter ought to be dismissed for the reason that the contribution of $250.00 was given in response to a request by the Election Committee which had hoped to wage an intensive election campaign inasmuch as the loss of the election would have been the demise of the subject politician. Thus an all-out effort was made to solicit funds and these companies which are affiliated with Japanese companies were willing contributors. No substantial monies were contributed and there was never any decision to influence legislation. The determination to make the contribution was made by the local branch manager out of operating funds. There have been no other contributions and the subject corporation has been apolitical in

ATTORNEYS AT LAW

Ikazaki
Devens
Lo
Youth
&Nakano

all respects. The funds are U.S. generated and there has been no consent or direction from abroad.

It is submitted that the violation was not the result of any insidious objective, but a technical apolitical infraction. As a matter of plain common sense, a single contribution during the last 10 years of only $250.00, certainly couldn't influence anything and clearly is not the objective of interdiction by 2 U.S.C. 441. See Affidavit of Osamu Ishimaru, Exhibit "1" attached.

In view of the foregoing, it is urged that the matter be dismissed.

Very truly yours,

IKAZAKI, DEVENS, LO, YOUTH
& NAKANO

By Herbert T. Ikazaki
Herbert T. Ikazaki

HTI:ck
Encls.
cc: Kintetsu International Express
(USA), Inc.

2 4 3 4 3 5 7 2 3 9 8

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	MUR 2892
	)	
KINTETSU INTERNATIONAL	)	
EXPRESS (U.S.A.), INC.	)	

RESPONSE OF KINTETSU INTERNATIONAL EXPRESS (U.S.A.), INC.
TO THE FEDERAL ELECTION COMMISSION'S
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

1. State your name, local address, business, and where you are incorporated.

KINTETSU INTERNATIONAL EXPRESS (U.S.A.), INC.
Honolulu Branch
The Waikiki Business Plaza, Suite 1402
2270 Kalakaua Avenue
Honolulu, Hawaii 96815

Business: Travel Agency

Place of Incorporation: State of California

2. Identify all officers and directors.

President and Director:	Masuhiro Matsumoto
Secretary and Director:	Yasuo Ishida
Treasurer and Director:	Kuniyoshi Kohno
Director :	Eiichi Kojima
Director :	Yasuyoshi Noguchi
Director :	Yukiaki Ikegami
Director :	Osamu Ishimaru
Director :	Kunihiro Kumamoto
Director :	Herbert T. Ikazaki

3. Identify all management personnel.

See Attachment A.

9 4 0 4 3 5 7 2 8 9 9

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

Kintetsu International Express (U.S.A.), Inc. a corporation organized under the laws of California is a subsidiary of Kinki Nippon Tourist, a corporation organized under the laws of Japan.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

Contribution of $250.00 to Friends of Fasi in September, 1988. In 1989, the contribution was refunded to the subject corporation.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

Hawaii Branch Manager: Osamu Ishimaru

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

The funds contributed were generated by the corporation from its business operations in Hawaii. No direction or funding came about through foreign nationals.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

There is no political action committee.

2 4 0 4 3 5 7 2 9 0 0

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

The subject corporation does not maintain any pool of funds for election activity.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

Osamu Ishimaru; he has been employed for over twenty (20) years with the subject corporation in various staffing and supervisory capacities. He was elected a director in 1990.

The Commission requests the following documents: all election reports required to be filed with any government agency.

The subject corporation has not been required to file any reports with any governmental agency.

7 4 0 4 3 5 7 2 9 0 1

STATE OF HAWAII)
: SS.
CITY AND COUNTY OF HONOLULU)

OSAMU ISHIMARU, being first duly sworn, on oath, deposes and says: that the foregoing Response of KINTETSU INTERNATIONAL EXPRESS (U.S.A.), INC., to the Federal Election Commission's Interrogatories and Request for Production of Documents are true to the best of his knowledge and belief.

OSAMU ISHIMARU

Subscribed and sworn to before me
this 8 day of June,
1990.

Notary Public, State of Hawaii

My commission expires: 2-1-92

2404357290 2

ATTACHMENT "A"

Management Personnel

Masuhiro Matsumoto, President
Yasuo Ishida, Secretary & General Manager, Administration
Toshiyuki Ikemoto, General Manager, Accounting
Masaaki Uetani, General Manager, New York Branch
Osamu Ishimaru, General Manager, Honolulu Branch
Masaaki Ono, Assistant General Manager, Honolulu Branch
Kiyoshi Kondo, Accounting Manager, Honolulu Branch
Takayuki Fukuoka, Manager Reservation and Purchasing, Honolulu Branch

2 4 0 4 3 5 7 2 9 0 3

AFFIDAVIT

STATE OF HAWAII)
: SS.
CITY AND COUNTY OF HONOLULU)

OSAMU ISHIMARU, being first duly sworn on oath deposes and says:

1. That he is the Branch Manager in charge of the Kintetsu International Express (USA), Inc. Honolulu offices;

2. That the decision to make a contribution to the Friends of Fasi in the sum of Two Hundred Fifty Dollars ($250.00) was a decision that he personally made without consultation with any other person;

3. That he did not feel it necessary to consult with any other person inasmuch as the amount was relatively insignificant and it was given in response to a request to raise political campaign funds and did not constitute an act that he initiated;

4. That he considered the donation a routine expenditure and without any significance politically speaking;

5. That the contribution represents funds generated through marketing efforts by the Honolulu offices;

6. That other than making the donation, neither he nor the personnel in Honolulu have any contacts with political parties or persons seeking political office;

7. That he is personally acquainted with the expenditures of the Honolulu offices for the past eight (8) years and do not

2 4 0 4 3 5 7 2 9 0 4

recall the making of any other political contributions other than the Two Hundred Fifty Dollars ($250.00) which seems to have gotten us into trouble with the Federal Election Commission;

8. That he is aware that the Two Hundred Fifty Dollars ($250.00) was ultimately refunded.

Further affiant sayeth naught.

OSAMU ISHIMARU

Subscribed and sworn to before me
this 8th day of June,
1990.

Notary Public, State of Hawaii

My commission expires: 2-1-92

2404357290 5

ATTORNEYS AT LAW

Ikazaki
Devens
Lo
Youth
&Nakano

Suite 1600 Central Pacific Plaza
220 South King Street
Honolulu, Hawaii 96813
Telephone (808) 521-1456
Cable Address "Whiteacre"
Fax (808) 538-3289

* Herbert T. Ikazaki
* Paul Devens
* Richard C. Lo
* Wilfred H. C. Youth
* James A. Nakano
* Russell K. Saito

Paula Devens
Thomas J. Wong
John T. Hoshibata

Stanley L. Ching
M. Inagaki
Harry Y. Oda
Ann S. Isobe

*A Law Corporation

OGC 6533
RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUN 12 AM 10:36

June 7, 1990

90 JUN 13 AM 11:33
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Federal Election Commission
999 E. Street N. W.
Washington, D. C. 20463

Re: MUR 2892
All Nippon Airways Co., Ltd.

Gentlemen:

This communication is in response to your communication of May 21, 1990 which was received by our office on May 29, 1990. Your communication seeks responses to interrogatories and any other statement that herewith submit in order to alleviate any further protraction of the problem.

We enclose pursuant to your request responses to your interrogatories.

It is our client's desire to bring the matter to a quick resolution. For such purpose, it desires to enter into conciliation negotiations.

We think the matter ought to be dismissed. In support thereof, it should be noted that the contribution complained of in the original instance ($500.00 to the Friends of Frank Fasi) was refunded by the politician and the net amount involved of the remaining contributions is less than a $1,000.00. The amounts involved are very nominal and such contributions were made in response to requests by the politicians as opposed to the contributor seeking to obtain legislative or administrative advantage for the benefit of a foreign national.

It is unrefutable that the funds which were involved in the political contribution emanated from foreign sources. However,

the funds were received by the Hawaii branch for use as operating funds and not for the specific purpose of making political contributions to influence legislation. The contributions made was based on the sole decision of the then Hawaii branch manager with no involvement by any of the executives in Japan. See Affidavit of Yuichi Kobayashi, Exhibit "1" attached.

It is submitted that as a practical matter it would be contrary to sound reasoning to believe that the amount involved could have had any impact, if any, upon the various donees and thus influence legislation. The matter is a one shot deal and the intervention of the Federal Election Commission, in fact, brings welcome relief from further requests for political contribution. There was no interest on the part of the donor to intermeddle in the U.S. domestic scene.

In view of the foregoing, it is urged that the matter be dismissed. However, if you deem a penalty warranted, it should be nominal because of the obvious innocent nature of the infraction and the lack of effectiveness of the contribution considering the amount involved.

Very truly yours,

IKAZAKI, DEVENS, LO, YOUTH
& NAKANO

By Herbert T. Ikazaki
Herbert T. Ikazaki

HTI:ck
Encls.
cc: All Nippon Airways
Co., Ltd.

2 4 3 4 3 5 7 2 9 0 7

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	MUR 2892
	)	
ALL NIPPON AIRWAYS	)	
CO., LTD.	)	

RESPONSE OF ALL NIPPON AIRWAYS CO., LTD.
TO THE FEDERAL ELECTION COMMISSION'S
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

1. State your name, local address, business, and where you are incorporated.

   ALL NIPPON AIRWAYS CO., LTD.
   2155 Kalakaua Avenue, Suite 712
   Honolulu, Hawaii 96815

   Business: Airlines - Service

   Place of Incorporation: Japan

2. Identify all officers and directors.

   See Attachment A.

3. Identify all management personnel.

   General Manager: Shinichi Sato
   Manager : Masanori Sakashita

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

   The Hawaii office involved in campaign contributions is a branch office.

7 4 0 4 3 5 7 2 9 0 8

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

See Attachment B.

The company filed reports for the years 1987 and 1988 to the Campaign Spending Committee, State of Hawaii. The company is not presently required to file any further reports with the State of Hawaii.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

Former District Manager: Yuichi Kobayashi
Current General Manager: Shinichi Sato

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

The source of funds used to make contributions is found in advances from the home office.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

No political action committee is maintained.

2 4 0 4 3 5 7 2 9 0 9

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

No specified pool of funds for election activity is maintained.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

Shinichi Sato, General Manager in Hawaii, answered the foregoing questions. Mr. Sato has been employed with All Nippon Airways Co., Ltd. for 31 years in various staff positions.

The Commission requests the following documents: all election reports required to be filed with any government agency.

See Attachment C.

2 4 0 4 3 5 7 2 9 1 0

STATE OF HAWAII)
: SS.
CITY AND COUNTY OF HONOLULU)

SHINICHI SATO, being first duly sworn, on oath, deposes and says: that the foregoing Response of ALL NIPPON AIRWAYS CO., LTD., to the Federal Election Commission's Interrogatories and Request for Production of Documents are true to the best of his knowledge and belief.

Shinichi Sato
SHINICHI SATO

Subscribed and sworn to before me
this 17 day of June,
1990.

Notary Public, State of Hawaii

My commission expires: 2-1-92

2 4 0 4 3 5 7 2 9 1 1

Board of Directors and Auditors

Chairman
Tokuji Wakasa

President & Chief Executive Officer
Akio Kondo

Senior Executive Vice President & Chief Operating Officer
Keisuke Inui

Senior Executive Vice President & Chief Operating Officer
Hiroshi Asakura

Executive Vice President
Yoshiyuki Funatsu

Executive Vice President
Masahiro Suwa

Executive Vice President
Seiji Fukatsu

Senior Vice President
Umeyuki Morihira

Senior Vice President
Sadatoshi Egami

Senior Vice President
Hideo Aoki

Senior Vice President
Satoshi Kurono

Senior Vice President
Takashi Ijichi

Senior Vice President
Mitsuo Iijima

Senior Vice President
Minoru Shigemori

Senior Vice President
Taiji Kameyama

Senior Vice President
Kiyoshi Kashiwabara

Directors

Chairman
Tokuji Wakasa

President & Chief Executive Officer
Akio Kondo

Senior Executive Vice Presidents & Chief Operating Officers

Keisuke Inui

Hiroshi Asakura

Executive Vice Presidents

Yoshiyuki Funatsu
Chairman of Safety Promotion Committee
Chairman of Environmental Protection Committee

Masahiro Suwa
General Affairs, Western Japan

Seiji Fukatsu
General Administration, Legal Affairs

Senior Vice Presidents

Umeyuki Morihira
Finance

Sadatoshi Egami
Computer & Communications Services

Hideo Aoki
Engineering and Maintenance

Satoshi Kurono
Flight Operations

Takashi Ijichi
Personnel & Employee Relations

Mitsuo Iijima
Executive Office

Minoru Shigemori
Associated Businesses
Purchasing & Facilities

Taiji Kameyama
International Relations & Affairs

Kiyoshi Kashiwabara
Sales & Services

Vice Presidents

Kichisaburo Nomura
General Manager, Tokyo Sales Office

Ryogo Inoue
General Manager, Osaka Sales Office

Chiaki Kida
Airport & In-flight Services

Kenro Yoshikawa
Corporate Planning & Public Relations

Hiroshi Sakabe
Flight Operations

Junichi Hagiwara
General Manager, Narita International Airport

Masayuki Sawada
Engineering & Maintenance

Minoru Tadokoro
General Manager, Tokyo International Airport

Katsuaki Kumagai
General Manager, Sapporo Sales Office

Hiroshi Tsukamoto
General Manager, Fukuoka Sales Office

Yuzuru Masumoto
General Manager, Osaka International Airport

Kanji Kimura
Sales & Services

Junro Ito
Corporate Affairs

Auditors

Shuhei Ohta
Takeyoshi Udo

External Directors

Kosaro Takeda
Chairman, Nagoya Railroad Co., Ltd

Takao Nagata
President, Overseas Vocational Training Association (OVTA)

Masakazu Echigo
Counselor, C. Itoh & Co., Ltd

Isamu Sahaki
Honorary Chairman, Kinki Nippon Railway Co., Ltd.

Tomno Hironka
Associated Fellow, Asahi Shimbun Publishing Company

External Auditors

Yoshiro Ito
President, Inoue Construction Co., Ltd

Saburo Nagakura
Director and Advisor, Kyushu Electric Power Co., Inc.

ATTACHMENT A

9 4 0 4 3 5 7 2 9 1 2

LIST OF CONTRIBUTIONS TO STATE AND LOCAL ELECTIONS FILED WITH THE HAWAII CAMPAIGN SPENDING COMMISSION

DATE	AMOUNT	RECIPIENT
03/30/87	$200.00	Senator Fernandes Salling "I Like Lehua Committee"
04/14/87	$100.00	Representative Bellinger "Friends of Reb Bellinger"
04/30/87	$500.00	Senate President Wong "Friends of Richard Wong"
05/07/87	$250.00	Senator Yamasaki "Friends to Re-Elect Senator Mamoru Yamasaki"
06/30/87	$500.00	Mayor Frank Fasi "Friends for Fasi Headquarters"
02/02/88	$200.00	Mayor Dante Carpenter "Friends of Carpenter"
02/17/88	$ 50.00	Representative Oshiro "Friends of Paul T. Oshiro"
04/01/88	$ 50.00	Senator Fernandes Salling "I Like Lehua Committee"
04/04/88	$ 50.00	Representative Bellinger "Friends of Reb Bellinger"
06/15/88	$ 25.00	Neil Abercrombie "Hui O Abercrombie"
03/06/89	$ 50.00	Representative Cachola "Friends of Romy Cachola"

ATTACHMENT B

2 4 0 4 3 5 7 2 9 1 3

LIST OF REFUNDS FOR CONTRIBUTIONS TO STATE AND LOCAL ELECTIONS

DATE	AMOUNT	REFUND RECEIVED FROM
09/07/89	$500.00	"Friends for Fasi"

P 4 0 4 3 5 7 2 9 1 4

REC'D MAR 1 7 1988

CAMPAIGN SPENDING COMMISSION
335 MERCHANT STREET, ROOM 215
HONOLULU, HAWAII 96813

JACK M. K. GONZALES
EXECUTIVE DIRECTOR

March 15, 1988

MEMORANDUM

TO: ALL CORPORATIONS, COMPANIES, & ORGANIZATIONS WHO HAVE MADE CONTRIBUTIONS TO CANDIDATES

FROM: THE CAMPAIGN SPENDING COMMISSION

RE: THE FILING OF STATEMENT OF CONTRIBUTIONS WITH THE COMMISSION

9 4 0 4 3 5 7 2 9 1 5

According to our records, your corporation or organization has contributed an aggregate of more than $1,000.00 to candidate committees. Pursuant to the Hawaii State Campaign Spending Law, any company or organization who make direct contributions in aggregate of more than $1,000.00 per election to candidate committees shall submit a STATEMENT OF CONTRIBUTIONS to the Campaign Spending Commission. This statement of contributions is a list of candidates your organization donated to. The list may be submitted on company stationary and shall consist of the date, the name of the candidate and the amount of each contribution.

This statement shall cover the period from January 1, 1987 through December 31, 1987 and shall be submitted to the Campaign Spending Commission office by April 4, 1988 by 4:30pm. If you are on the outer islands you may file the report at your county clerk's office.

Enclosed is a copy of the due dates for the election year 1988. If you make contributions during a reporting period, (PrePrimary, PostPrimary, PreGeneral, PostGeneral) the statement of contributions is due on the reporting deadline date for that period. If you do not make contributions during a specific reporting period no statement is due until you make subsequent contributions during the next reporting period.

If you have any questions please contact our office at 548-5411 or if you are on the outer islands please use our toll free number by dialing the operator and asking for Enterprise 5406.

Attachment C

ANA

March 21, 1988

CAMPAIGN SPENDING COMMISSION
335 Merchant Street, Room 215
Honolulu, Hawaii 96813

RE: STATEMENT OF CONTRIBUTIONS

Dear Sir:

Pursuant to Hawaii State Campaign Spending Law, we herewith enclose a schedule setting for the amount contributed to various candidates or their respective campaign committees.

Very truly yours,

YK Kobayashi

YK Kobayashi
District Manager - Hawaii

YKK/lrk
Enclosure

940435729916

ALL NIPPON AIRWAYS CO., LTD. 2255 Kuhio Avenue, Suite 1005, Honolulu, Hawaii 96815
Tel (808) 922-1296 • Fax (808) 922-0794 • Telex (723) 8314 ANAHNL HH

ANA

1987 STATEMENT OF CONTRIBUTIONS

Name	Date of Fundraising Event	Date & Amount of Contributions
Senator Fernandes Salling "I Like Lehua Committee"	April 7, 1987	03/30/87 -- $200.00
Representative Bellinger "Friends of Reb Bellinger"	April 20, 1987	04/14/87 -- $100.00
Senate President Wong "Friends of Richard Wong"	April 30, 1987	04/30/87 -- $500.00
Senator Yamasaki "Friends to Re-Elect Senator Mamoru Yamasaki"	May 7, 1987	05/07/87 -- $250.00
Mayor Frank Fasi "Friends for Fasi Headquarters"	August 29, 1987	06/30/87 -- $500.00
	TOTAL 1987 CONTRIBUTIONS	$1,550.00

9 4 0 4 3 5 7 2 9 1 7

ALL NIPPON AIRWAYS CO., LTD. 2255 Kuhio Avenue, Suite 1005, Honolulu, Hawaii 96815
Tel. (808) 922-1296 • Fax (808) 922-0794 • Telex (723) 8314 ANAHI HR

CAMPAIGN SPENDING COMMISSION

REMINDER REC'D AUG 08 1988

YOUR STATEMENT OF CONTRIBUTIONS IS DUE IN OUR OFFICE OR THE RESPECTIVE COUNTY CLERK'S OFFICE ON OR BEFORE 4:30 P.M., SEP 2 - 1988. THOSE WHO FAIL TO SUBMIT THEIR REPORT ON TIME OR FAIL TO RESPOND TO THE COMMISSION'S NOTICE OF FAILURE TO FILE, MAY BE SUBJECT TO PROSECUTION.

THIS REPORT COVERS THE PERIOD FROM

11/1/88 **TO** 9/2/88

PLEASE BE INFORMED THAT MAILING POST DATED REPORTS ON DUE DATES ARE NOT ACCEPTABLE AND EXTENSIONS FOR LATE FILING WILL NOT BE GRANTED.

2404357291 8

ANA

August 26, 1988

CAMPAIGN SPENDING COMMISSION
335 Merchant Street, Room 215
Honolulu, Hawaii 96813

RE: STATEMENT OF CONTRIBUTIONS

Dear Sir:

Pursuant to Hawaii State Campaign Spending Law, we herewith enclose a schedule setting for the amount contributed to various candidates or their respective campaign committees.

Very truly yours,

Shinichi Sato

Shinichi Sato
Regional Manager, Hawaii

SS/lrk
Enclosure

9404357291 9

ALL NIPPON AIRWAYS CO., LTD. 2255 Kuhio Avenue Suite 1201 Honolulu Hawaii 96815
Tel (808) 922-1296 • Fax (808) 922-0794

ANA

STATEMENT OF CONTRIBUTIONS

Name	Date of Fundraising Event	Date & Amount of Contribution
Mayor Dante Carpenter "Friends of Carpenter"	February 9, 1988	02/02/88 -- $200.00
Representative Oshiro "Friends of Paul T. Oshiro"	March 16, 1988	02/17/88 -- $ 50.00
Senator Fernandes Salling "I Like Lehua Committee"	April 8, 1988	04/01/88 -- $ 50.00
Representative Bellinger "Friends of Reb Bellinger"	April 4, 1988	04/04/88 -- $ 50.00
Neil Abercrombie "Hui O Abercrombie"	June 21, 1988	06/15/88 -- $ 25.00
	TOTAL 1988 CONTRIBUTIONS	$375.00

9 4 0 4 3 5 7 2 9 2 0

ALL NIPPON AIRWAYS CO., LTD.

CAMPAIGN SPE' ING COMMISSION REC'D OCT 1 0 '8

REMINDER

YOUR STATEMENT OF CONTRIBUTIONS IS DUE IN OUR OFFICE OR THE RESPECTIVE COUNTY CLERK'S OFFICE ON OR BEFORE 4:30 P.M. OCT [illegible]. THOSE WHO FAIL TO SUBMIT THEIR REPORT ON TIME OR FAIL TO RESPOND TO THE COMMISSION'S NOTICE OF FAILURE TO FILE, MAY BE SUBJECT TO PROSECUTION.

THIS REPORT COVERS THE PERIOD FROM

1/1/88 **TO** 10/24/88

PLEASE BE INFORMED THAT MAILING POST DATED REPORTS ON DUE DATES ARE NOT ACCEPTABLE AND EXTENSIONS FOR LATE FILING WILL NOT BE GRANTED.

9 4 0 4 3 5 7 2 9 2 1

ANA

October 20, 1988

CAMPAIGN SPENDING COMMISSION
335 Merchant Street, Room 215
Honolulu, Hawaii 96813

RE: STATEMENT OF CONTRIBUTIONS

Dear Sir:

Pursuant to Hawaii State Campaign Spending Law, enclosed is a schedule setting for the amount contributed to various candidates or their respective campaign committees during the period from January 1st to October 24th, 1988.

As shown on the Statement of Contributions, the contributed amount has not changed since the prior request in September (from 01/01/88 to 09/02/88).

Thank you.

Very truly yours,

Shinichi Sato

Shinichi Sato
Regional Manager, Hawaii

SS/lrk
Enclosure

9 4 0 4 3 5 7 2 9 2 2

ALL NIPPON AIRWAYS CO., LTD. 2255 Kuhio Avenue Suite 1201 Honolulu Hawaii 96815
Tel (808) 922 1296 • Fax (808) 922 0794

ANA

1988 STATEMENT OF CONTRIBUTIONS

Name	Date of Fundraising Event	Date & Amount of Contributions
Mayor Dante Carpenter "Friends of Carpenter"	February 9, 1988	02/02/88 -- $200.00
Representative Oshiro "Friends of Paul T. Oshiro"	March 16, 1988	02/17/88 -- $ 50.00
Senator Fernandes Salling "I Like Lehua Committee"	April 8, 1988	04/01/88 -- $ 50.00
Representative Bellinger "Friends of Reb Bellinger"	April 4, 1988	04/04/88 -- $ 50.00
Neil Abercrombie "Hui O Abercrombie"	June 21, 1988	06/15/88 -- $ 25.00
	TOTAL 1988 CONTRIBUTIONS	$375.00

2404357292 3

ALL NIPPON AIRWAYS CO., LTD. 2255 Kuhio Avenue Suite 1201, Honolulu, Hawaii 96815
Tel (808) 922-1296 • Fax (808) 922-0744

CAMPAIGN SPENDING COMMISSION

REMINDER

YOUR STATEMENT OF CONTRIBUTIONS IS DUE IN OUR OFFICE OR THE RESPECTIVE COUNTY CLERK'S OFFICE ON OR BEFORE 4:30 P.M., JUL 31 1989. THOSE WHO FAIL TO SUBMIT THEIR REPORT ON TIME OR FAIL TO RESPOND TO THE COMMISSION'S NOTICE OF FAILURE TO FILE, MAY BE SUBJECT TO PROSECUTION.

THIS REPORT COVERS THE PERIOD FROM

1/1/89 **TO** 6/30/89

PLEASE BE INFORMED THAT MAILING POST DATED REPORTS ON DUE DATES ARE NOT ACCEPTABLE AND EXTENSIONS FOR LATE FILING WILL NOT BE GRANTED.

9404357292 4

ANA

July 7, 1989

CAMPAIGN SPENDING COMMISSION
335 Merchant Street, Room 215
Honolulu, Hawaii 96813

RE: STATEMENT OF CONTRIBUTIONS

Dear Sir:

Pursuant to Hawaii State Campaign Spending Law, we herewith enclose a schedule setting for the amount contributed to various candidates or their respective campaign committees.

Very truly yours,

Shinichi Sato

Shinichi Sato
Regional Manager, Hawaii

SS/lrk
Enclosure

9 4 0 4 3 5 7 2 9 2 5

ALL NIPPON AIRWAYS CO., LTD. 2255 Kuhio Avenue, Suite 1201, Honolulu, Hawaii 96815
Tel. (808) 922-1296 • Fax (808) 922-0794

ANA

1989 STATEMENT OF CONTRIBUTIONS
(This report covers the period from 01/01/89 to 06/30/89)

Name	Date of Fundraising Event	Date & Amount of Contributions
Representative Cachola "Friends of Romy Cachola"	March 8, 1989	03/06/89 -- $50.00
Senator James Aki	May 11, 1989	04/28/89 -- $75.00
	TOTAL CONTRIBUTIONS (01/01/89 to 06/30/89)	$125.00

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ALL NIPPON AIRWAYS CO., LTD. 2255 Kuhio Avenue Suite 1,[illegible] Honolulu Hawaii [illegible]
Tel. (808) 922-1296 • Fax (808) 922-0794

First Hawaiian Bank

If you recover this check please notify us so that we may remove this order from our records.

When issuing a check to replace one lost please use new date and number and do not mark "Duplicate" on new check.

Please verify that the stop payment information you have provided is accurate. The bank may not be able to comply with your stop payment request if this information is wrong.

All Nippon Airways Attn:Theresa

2255 Kuhio Av. #1201

Hon. HI 96815

STOP PAYMENT REQUEST № 528395

Account No. 31-075262 Date 11-7-89

Receiving Branch No. 31

Check No. 1749 Amount $75.00 Dated 4-28-89

Payee Friends of James Aki

Reason lost

PLEASE CONFIRM YOUR STOP PAYMENT ORDER BY SIGNING COPY 1 OF THIS REQUEST FORM

In response to your request we have placed a stop payment order on the check.

An oral stop payment order is good for only 14 calendar days unless your request is confirmed to us in writing before the end of this 14 day period. Written stop payment orders are good for only 6 months unless renewed again in writing.

You should understand that your stop payment order will be good only if it has been given to us in time before we have 1 cashed the check, 2 negotiated a final "settlement" of the check, or 3 completed the "process of posting" for the check or otherwise started making payment on the check. The "settlement" of the check means we have become responsible to another financial institution to pay the check. The "process of posting" is the usual procedure which we follow in deciding to make payment on a check and in recording the payment. These are rights granted to us under Hawaii law Section 4-303 and 4-403 of the Hawaii Uniform Commercial Code.

CUSTOMER'S COPY-1

First Hawaiian Bank

YOU ARE HEREBY AUTHORIZED TO STOP PAYMENT ON THE CHECK DESCRIBED HEREON

Signature

Date Nov. 09, 1989

All Nippon Airways Attn:Theresa

2255 Kuhio Av. #1201

Hon. HI 96815

STOP PAYMENT REQUEST № 528395

Account No. 31-075262 Date 11-7-89

Receiving Branch No. 31

Check No. 1749 Amount $75.00 Dated 4-28-89

Payee Friends of James Aki

Reason lost

TD Verification (Hawaii only)	
X	Com. Trans. Journal
X	Not a Certified Check

✓	List (Guam Only)
	Paid Checks & Today's EDP Checks
	Total No. of Debits & Tax Checks
	Not a Certified Check

ACCEPTED		ENTERED ON TD	
Time 11:35	By N	Time 11:45	By N

Authorized Signature

BANK COPY-2

⑈4043572227

No contributions made during the reporting period : 07/01/89 to 12/31/89.

Thus, as per instructions, no statement of contributions for this period has been filed.

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CAMPAIGN SPENDING COMMISSION
REMINDER

REC'D JAN - 8 1990

YOUR STATEMENT OF CONTRIBUTIONS IS DUE IN OUR OFFICE OR THE RESPECTIVE COUNTY CLERK'S OFFICE ON OR BEFORE 4:30 P.M., JAN 30 1990. ONE ORIGINAL AND ONE COPY ARE TO BE FILED WITH OUR OFFICE OR ONE ORIGINAL AND TWO COPIES ARE TO BE FILED WITH THE COUNTY CLERK'S OFFICE. IF YOU DID NOT MAKE ANY CONTRIBUTIONS DURING THE REPORTING PERIOD, YOU NEED NOT FILE A STATEMENT OF CONTRIBUTIONS FOR THIS PERIOD.

THIS STATEMENT COVERS THE PERIOD FROM

7/1/89 TO 12/31/89

PLEASE BE INFORMED THAT MAILING POST DATED REPORTS ON DUE DATES ARE NOT ACCEPTABLE AND EXTENSIONS FOR LATE FILING WILL NOT BE GRANTED.

tyk 01/10/90

End of Attachment C

AFFIDAVIT

JAPAN
CITY OF TOKYO
EMBASSY OF THE UNITED STATES OF AMERICA ss)
)
)

YUICHI KOBAYASHI, being first duly sworn on oath deposes and says:

1. That he was the Branch Manager in charge of the ALL NIPPON AIRWAYS CO., LTD. ("ANA") Honolulu offices;

2. That the decision to make a contribution to the Friends of Fasi in the sum of Two Hundred Fifty Dollars ($250.00) and other candidates was a decision that he personally made without consultation with any other person;

3. That he did not feel it necessary to consult with any other person inasmuch as the amount was relatively insignificant and it was given in response to a request to raise political campaign funds and did not constitute an act that he initiated;

4. That he considered the donation a routine expenditure and without any significance politically speaking;

5. That the contribution represents funds advanced from the home office in Japan for operational purposes and without designation for political purposes. The funds were advanced from Japan because ANA was not operative or actively in business then;

6. That other than making the donation, neither he nor the personnel in Honolulu have any contacts with political parties or persons seeking political office;

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7. That he is aware that the Two Hundred Fifty Dollars ($250.00) was ultimately refunded.

Further affiant sayeth naught.

Yuichi Kobayashi

Yuichi Kobayashi

YUICHI KOBAYASHI

Subscribed and sworn to before me this 13th day of June, 1990.

Marina Morgenegg

~~Notary Public~~

Marina Morgenegg
Vice Consul of the United States of America
duly commissioned and qualified

~~My commission expires:~~

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OOC 6599

ATTORNEYS AT LAW

Ikazaki Devens Lo Youth & Nakano

Suite 1600 Central Pacific Plaza
220 South King Street
Honolulu, Hawaii 96813
Telephone (808) 521-1456
Cable Address "Whiteacre"
Fax (808) 538-3289

* Herbert T. Ikazaki
* Paul Devens
* Richard C. Lo
* Wilfred H. C. Youth
* James A. Nakano
* Russell K. Saito

Paula Devens
Thomas J. Wong
John T. Hoshibata

Stanley L. Ching
Caron M. Inagaki
Harry Y. Oda
Ann S. Isobe

*A Law Corporation

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUN 12 AM 10:36

June 7, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Federal Election Commission
999 E. Street N. W.
Washington, D. C. 20463

Re: MUR 2892
ANA Hallo Tours (USA), Inc.

90 JUN 13 AM 11:33

Gentlemen:

This communication is in response to your communication of May 21, 1990 which was received by our office on May 29, 1990. Your communication seeks responses to interrogatories and any other statement that we herewith submit in order to alleviate any further protraction of the problem.

We enclose pursuant to your request responses to your interrogatories.

It is our client's desire to bring the matter to a quick resolution. For such purpose, it is desirous to enter into conciliation negotiations.

It is urged that you give consideration to dismissing the matter. In support thereof, it should be noted that the contribution of $250.00 made by the corporation is the one and only contribution ever made by the corporation. The subject contribution is really apolitical, for the election year involved was a year where the related candidate made intensive funds raising efforts for an office which if he had lost would have spelled finish to his political career. Thus, the candidate canvassed the entire Honolulu businesses and a contribution was made in response and not as an affirmative act.

The decision to make the contribution was a decision of a person who is a resident alien of Hawaii who made his decision

without any regard to any impact upon the corporation as a foreign owned corporation. Moreover, the funds were made from operational sources. The contribution was conclusively apolitical for a one-shot contribution of an insignificant amount surely cannot be logically ascribed any motives that 2 U.S.C. 441 seeks to prohibit. There was no intermeddling from Japan in any fashion whatsoever. See Affidavit of Haruo Kito, Exhibit "1" attached.

In view of the foregoing, it is submitted that while there may have been a violation, the violation was a technical one at best and the matter should be dismissed. As counsel, I certainly would recommend my client closing the case if that can be done on the basis of a nominal penalty.

Very truly yours,

IKAZAKI, DEVENS, LO, YOUTH
& NAKANO

By Herbert T. Ikazaki
Herbert T. Ikazaki

HTI:ck
Encls.
cc: ANA Hallo Tours (USA), Inc.

2 4 0 4 3 5 7 2 9 4 2

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	MUR 2892
	)	
ANA HALLO TOURS (USA), INC.	)	

RESPONSE OF ANA HALLO TOURS (USA), INC.
TO THE FEDERAL ELECTION COMMISSION'S
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

1. State your name, local address, business, and where you are incorporated.

ANA HALLO TOURS (USA), INC.
2255 Kuhio Avenue, Suite 1025
Honolulu, Hawaii 96815

Business: Tour Agency

Place of Incorporation: California

2. Identify all officers and directors.

Director/President	:	Naohiko Kato
Director/Exec. Vice Pres.	:	Kenichi Kikuchi
Director/Exec. Vice Pres.	:	Haruo Kito
Director/Exec. Vice Pres.	:	Keizo Mori
Director/Secretary	:	Kaoru Bingo
Director	:	Tadashi Iwai
Director	:	Taiji Kawayaira

3. Identify all management personnel.

Operations Manager	:	Shinichi Sato
Tour Manager	:	Masanori Sakashita
Hotel Reservations Supervisor	:	Mariko Michihara
Accounting Supervisor	:	Kay Bishop
Accounting Manager	:	Jean Koga

7 4 0 4 3 5 7 2 9 3 3

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

The corporation was a wholly-owned subsidiary of All Nippon Airways World Tours Co., Ltd., a corporation organized under the laws of Japan. The said parent corporation no longer controls the subject corporation.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

Contribution of $250.00 made to Friends for Fasi Committee in July 27, 1987.

Refund of $250.00 received from the Mayor's office for above returned contribution on September 5, 1989. The corporation was not required to file any reports with any governmental agency.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

Haruo Kito, officer in charge of the Honolulu branch operations.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

The source of funds used to make contributions was generated through the corporation's Hawaiian operations. No funds were provided directly or indirectly by a foreign national.

2 4 0 4 3 5 5 7 2 9 3 4

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

The subject corporation does not maintain a political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

The subject corporation does not maintain a pool of funds specified for election activity.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

The answers were prepared by Jean Koga, Accounting Manager. She has been employed at ANA Hallo Tours (USA), Inc. for 2 years.

The Commission requests the following documents: all election reports required to be filed with any government agency.

The subject corporation has not been required to file any reports with any governmental agency.

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STATE OF HAWAII)
: SS.
CITY AND COUNTY OF HONOLULU)

HARUO KITO, being first duly sworn, on oath, deposes and says: that the foregoing Response of ANA HALLO TOURS (USA), INC., to the Federal Election Commission's Interrogatories and Request for Production of Documents are true to the best of his knowledge and belief.

Haruo Kito
HARUO KITO

Subscribed and sworn to before me
this 8th day of June,
1990.

Notary Public, State of Hawaii

My commission expires: 2-1-92

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AFFIDAVIT

STATE OF HAWAII)
: SS.
CITY AND COUNTY OF HONOLULU)

HARUO KITO, being first duly sworn on oath deposes and says:

1. That he is the Branch Manager in charge of the ANA Hallo Tours (USA), Inc. Honolulu offices;

2. That the decision to make a contribution to the Friends of Fasi in the sum of Two Hundred Fifty Dollars ($250.00) was a decision that he personally made without consultation with any other person;

3. That he did not feel it necessary to consult with any other person inasmuch as the amount was relatively insignificant and it was given in response to a request to raise political campaign funds and did not constitute an act that he initiated;

4. That he considered the donation a routine expenditure and without any significance politically speaking;

5. That the contribution represents funds generated through marketing efforts by the Honolulu offices;

6. That other than making the donation, neither he nor the personnel in Honolulu have any contacts with political parties or persons seeking political office;

7. That he is personally acquainted with the expenditures of the Honolulu offices for the past five (5) years and do not recall the making of any other political contributions other than

2 4 0 4 3 5 7 2 9 3 7

the Two Hundred Fifty Dollars ($250.00) which seems to have gotten us into trouble with the Federal Election Commission;

8. That he is aware that the Two Hundred Fifty Dollars ($250.00) was ultimately refunded.

Further affiant sayeth naught.

HARUO KITO

Subscribed and sworn to before me
this 8th day of June,
1990.

Notary Public, State of Hawaii

My commission expires: 2-1-92

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OGC 6585

KOBAYASHI, WATANABE, SUGITA, KAWASHIMA & GODA
ATTORNEYS AT LAW
HAWAII TOWER, 6th FLOOR
745 FORT STREET
HONOLULU, HAWAII 96813-3880
TELEPHONE (808) 544-8300

Kevin S.C. Chang*
Kale Feldman*
Alan M. Goda*
Lyle Y. Hosoda*
J. Douglas Ing*
Cheryl K. Kitasu*
James Kawashima*
Bert T. Kobayashi, Jr.*
John T. Komeiji*
Wray H. Kondo*
Benjamin A. Kudo*
Dale W. Lee*
Ronald Y. K. Leong*
Michael A. Lorusso*
Lee R. Smith*
Kenneth Y. Sugita*
Robert T. Takemoto*
Jeffrey N. Watanabe*
Cynthia Wraeger*
Randall Y. Yamamoto*
*A Law Corporation

Jan M. L. Y. Amii
George B. Apter
Ferdinand G. Aranas
Wendell H. Fuji
Charles W. Gall
Roseanne K. Goo
Lyle S. Hosoda
Robert K. Ishikawa
Donna Y. Kanemaru
Pamela J. Larson
Alan K. Maeda
David L. Murray
Janeen A. Olds
Fred Troncone

June 12, 1990

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 15 PM 12:01
RECEIVED
OF COUNSEL
George R. Knight
Bert T. Kobayashi, Sr.
Russell K.
Facsimile: 544-
Telex:
MCI Mail:
ABA/Net:

HAND DELIVERED
90 JUN 14 PM 8:50
RECEIVED
FEDERAL ELECTION COMMISSION

VIA DHL COURIER SERVICE

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Attn: Michael Troy

Re: Hachidai USA, Inc./MUR 2892

Dear Mr. Troy:

This letter follows our telephone conversation on June 12, 1990.

As discussed, Hachidai USA, Inc. (hereinafter "Hachidai") requests that the Federal Election Commission (hereinafter "Commission") enter into negotiations for the purpose of achieving pre-probable cause conciliation pursuant to 11 CFR 111.18 (d).

As further discussed, you indicated that the Commission would require answers to its discovery requests to give the Commission a basis for determining whether Hachidai's situation should be considered for conciliation. Based on this circumstance, we request a two week extension of time to prepare a response to the Commission's discovery request.

For your preliminary review, please consider the following information:

1. There was no willful or deliberate intent on the part of Hachidai to violate the Federal Election Campaign Act of 1971 (hereinafter "Act"). Hachidai made its contributions to the Friends of Fasi campaign based upon the belief that such contributions were allowed under U.S. law. (See Affidavit of Akira Kato attached to letter to the

9404357293 9

Commission dated July 14, 1989. Thus, the violation of the Act by Hachidai was inadvertent and unintentional.

2. The total amount of Hachidai's contributions was only $2,000.00, and was made to the Friends of Fasi on March 16, 1988.

Thank you for your courtesy and cooperation in this matter. If you should have any questions or require additional information, please do not hesitate to contact the undersigned directly.

Very truly yours,

Alan K Maeda

ALAN K. MAEDA
for
KOBAYASHI, WATANABE,
SUGITA, KAWASHIMA & GODA

AKM (3013F)

7404357294 0

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

June 18, 1990

Mr. Alan K. Maeda
Kobayashi, Watanabe, Sugita,
Kawashima & Goda
Hawaii Tower, Eighth Floor
745 Fort Street
Honolulu, Hawaii 96813-3889

RE: MUR 2892
Hachidai U.S.A., Inc.

Dear Mr. Maeda:

This is in response to your letter dated June 12, 1990, which we received on June 14, 1990, requesting an extension of two weeks to respond to the above captioned matter. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on June 27, 1990.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Jonathan Bernstein
Assistant General Counsel

9404357294 1

OGC 6627

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90 JUN 18 PM 11:28

LAW OFFICES OF
JASON G.F. WONG
900 FORT STREET, SUITE 1870, PIONEER PLAZA
HONOLULU, HAWAII 96813
TELEPHONE (808) 523-1788
FACSIMILE (808) 523-1583

June 12, 1990

VIA FAX NO. 202-376-5280

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

Attn: Michael Troy, Esq.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 18 PM 3:54

Re: MUR 2892
New Tokyo-Hawaii Restaurant Co., Ltd.

Dear Mr. Troy:

Enclosed per our telephone conversation are New Tokyo's Answers to Interrogatories and Response to Request for Production of Documents. At this time, we are requesting that the matter be dismissed based upon the enclosed information (and earlier submitted memorandum/Affidavit of Bert Shimabuku) or alternatively, we would request consideration for a conciliation agreement pursuant to 11 CFR 111.18.

Your attention to this matter is appreciated.

Very truly yours,

Jason G. F. Wong

JGFW:vy:6/90:24

cc: Client

9404357294 2

JASON G. F. WONG #2097
900 Fort St., Suite 1270
Honolulu, Hawaii 96813
Telephone No.: 523-1788

Attorney for
NEW TOKYO-HAWAII RESTAURANT CO., LTD.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of New Tokyo-Hawaii Restaurant Co., Ltd.	)	MUR 2892

ANSWERS TO INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS

To: The Federal Election Commission

Comes now New Tokyo-Hawaii Restaurant Co., Ltd. (hereinafter "New Tokyo") and for answers to The Federal Election Commission's Interrogatories and Request For Production Of Documents states as follows:

Note: "US" = U. S. Citizen
"PR" = Permanent Resident
"NRA" = Non-Resident Alien

Answers to Interrogatories:

1. New Tokyo-Hawaii Restaurant Co., Ltd.
286 Beach Walk, Honolulu, Hawaii 96815
Business: Retail restaurant establishment
Incorporated in the State of Hawaii

2. Officers and Directors for the years 1986, 1987 & 1988:

Officers:

Koichi Fujii..... President (NRA)
2-Chome, 2-3 Yuraku-Cho
Chiyoda-ku, Tokyo, Japan

Tsuneo Fukuda..... Chairman of the Board, First Vice-President (NRA)
2-Chome, 2-3 Yuraku-Cho
Chiyoda-ku, Tokyo, Japan

2404357294 3

Motoji Mori..... Second Vice-President (NRA)
2-Chome, 2-3 Yuraku-Cho
Chiyoda-ku, Tokyo, Japan

Kathleen Kagawa..... Secretary (US)
3215 Kaohinani Drive
Honolulu, Hawaii 96817

Ken Takahashi..... Treasurer (PR)
6845 Hawaii Kai Drive
Honolulu, Hawaii 96825

Directors:	Address:
Koichi Fujii	same as above
Tsuneo Fukuda	same as above
Motoji Mori	same as above
Takeshi Iwasa (NRA)	2-Chome, 2-3 Yuraku-Cho Chiyoda-ku, Tokyo, Japan
Yoshitaka Takakuwa (NRA)	7-10-1 Ginza Chuou-ku, Tokyo, Japan
Kazuo Arakawa (NRA)	7-10-1 Ginza Chuou-ku, Tokyo, Japan
Kiyoshi Ohbe (PR)	1117 20th Avenue Honolulu, Hawaii 96816

Offices and Directors for the year 1989:

Officers:

Tsuneo Fukuda..... President, Executive Officer, Chairman of the Board

Motoji Mori..... Executive Vice-President

Ken Takahashi..... Vice-President

Kathleen Kagawa..... Secretary

Richard Hidano..... Treasurer (US)
2165 Hoohai Street
Pearl City, Hawaii 96782

3404357294 4

Directors: (addresses same as above)

Koichi Fujii, Tsuneo Fukuda, Motoji Mori, Takeshi Iwasa, Yoshitaka Takakuwa, Kazuo Arakawa, Kiyoshi Ohbe.

Offices and Directors for the year 1990:

Officers:

Tsuneo Fukuda..... President, Chief Executive Officer, Chairman of the Board,

Motoji Mori..... Executive Vice-President

Ken Takahashi..... Vice-President and Secretary

Richard Hidano..... Treasurer

Directors:

Tsuneo Fukuda, Motoji Mori, Takeshi Iwasa, Ken Takahashi, Yoshitaka Takakuwa, Kazuo Arakawa, Kiyoshi Ohbe and

Takuya Kitagawa (NRA) 2-Chome, 2-3 Yuraku-Cho Chiyoda-ku, Tokyo, Japan

Hidenori Yokota (NRA) 7-10-1 Ginza Chuou-ku, Tokyo, Japan

3. Current management:

Bert Shimabuku (US)
679 22nd Avenue, Honolulu, Hawaii 96816
Executive Director of Operations 1973 to 1989
General Manager since 1990

Ken Takahashi
General Manager from 1987 to 1989
Vice-President since 1990

Kathleen Kagawa
Resigned as of 1990

4. New Tokyo is owned by Sapporo Breweries, Ltd., a Japan corporation (25%) and New Tokyo Restaurant Co., Ltd., a Japan corporation (75%).

2404357294 5

5. $500.00 contribution for purchase of tickets for a dinner for Frank Fasi. No refunds received. We did not believe nor do we believe any reports were required with any state election board.

6. Bert Shimabuku
679 22nd Avenue
Honolulu, Hawaii 96816

7. The $500.00 contribution was paid out of funds derived by the operations of the business in Hawaii. No part of the funds was provided directly or indirectly by a foreign national.

8. No.

9. No.

10. Has been employed by New Tokyo for sixteen (16) years as an Executive Director of Operations. Made General Manager on October, 1989. *

<u>Response to Request for Production of Documents</u>:

New Tokyo does not have nor is aware of any reports that were or are required to be filed with any government agency.

* Please see letter of June 23, 1989 submitted by counsel for New Tokyo as well as Affidavit of Bert Shimabuku dated June 23, 1989 which is incorporated into these answers to interrogatories for your consideration.

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STATE OF HAWAII)
) SS.
CITY & COUNTY OF HONOLULU)

BERT SHIMABUKU, being first duly sworn on oath, deposes and says that he is the General Manager of New Tokyo-Hawaii Restaurant Co., Ltd. and that the answers to the foregoing interrogatories are true to the best of his knowledge and belief.

Bert Shimabuku
BERT SHIMABUKU

Subscribed and sworn to before me
this 12th day of June, 1990.

Notary Public, State of Hawaii

My Commission Expires: 8-2-91

94043572947

OGC 6626

ASHFORD & WRISTON
A T T O R N E Y S A T L A W
Title Guaranty Building
235 Queen Street
P.O. Box 131
Honolulu, Hawaii 96810
TELEPHONE
(808) 524-4787
FACSIMILE
(808) 533-4945

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUN 18 PM 11:35

June 12, 1990

Patty Reilly, Esq.
Office of the General Counsel
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Re: MUR 2892
Tobishima Pacific, Inc.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 18 PM 3:53

Daer Ms. Reilly:

We represent Respondent Tobishima Pacific, Inc. ("Respondent").

Pursuant to 11 C.F.R. §111.18(d), we formally request tht the Office of the General Counsel pursue a pre-probable cause conciliation agreement with us.

Enclosed please find Respondent's answers to the Federal Election Commission's Interrogatories and Request for Production of Documents. In addition to Respondent's answers, the facts surrounding Reponondent's alleged 1987 violation of 2 U.S.C. § 44le are detailed below.

Respondent is not a foreign national. It is a U.S. corporation, incorporated in Hawaii, and subject to U.S. and Hawaii taxes. Its principal place of business is also in Hawaii. Respondent is a real estate developer with a project on the Island of Maui. It has no projects of plans for future projects in the City and County of Honolulu, on the Island of Oahu.

Respondent is a wholly owned subsidiary of Tobishima Corporation, a Japanese corporation; however, Respondent's ordinary working fund consists of money borrowed from a consortium of United States banks. Respondent has bought only one ticket to a political event and has made no other political campaign contributions. The ticket cost $250, and was for a Friends For Fasi fundraiser in 1987. The money used to purchase the ticket came from Respondent's ordinary working fund.

9404357294 8

A. James Winston, Jr.*
Albert H. Ogata*
John Jubinsky*
Galen C.K. Leong
Jack M. Rolls, Jr.
Wayne Nasser*
Douglas W. MacDougal*
John A. Lockwood*
Culler E. Shaw*
Michael W. Gibson
Rosemary T. Fazio
Diane S. Kishimoto
Paul S. Aoki
Francis P. Hogan
James K. Mee
Lynn B. Hirano
—
Kirk W. Caldwell
Marjorie C.Y. Au
Adrian W. Rosehill
Paul R. Goto
Katharine P. Lloyd
Na'unamkina'u A. Kamali'i
Veronica L. Stanford
Owen H. Matsunaga
Shah J. Bento
Charles A. Price
Keith M. Yonamine
*A Law Corporation
William B. Stephenson
(1915–1964)
OF COUNSEL
Clinton R. Ashford*
Charles B. Dwight III
COUNSEL
Robert Bruce Graham, Jr.
Lani D.H. Nakazawa
M. Eleanor Herberg
KAILUA-KONA OFFICE
Kuakini Tower, Suite 208
75-5722 Kuakini Hwy.
Kailua-Kona, HI 96740
TELEPHONE 329-7706
FACSIMILE 329-7525

Tetsuo Fukuda, a Japanese national who resides in Hawaii, bought the ticket on behalf of Respondent. He did so after first receiving a Friends For Fasi letter requesting that Respondent buy tickets to a fundraiser. The letter stated that Hawaii corporations may legally contribute up to $2,000 (see letter attached). Mr. Fukuda initially ignored the letter. The letter was followed up by a telephone call from a Friends For Fazi campaigner. Speaking fluent Japanese, the campaigner urged Mr. Fukuda to make a contribution. He stated that everyone was participating because it was a part of good citizenship and perfectly legal under Hawaii law. Mr. Fukuda, on Respondent's behalf, reluctantly bought one ticket. He did not attend the fundraiser, nor did anyone associated with Respondent. Subsequently, Friends For Fasi returned the $250.

At the time Respondent purchased the ticket, it did not know what it was getting into. It was not aware of the Federal Election Campaign Act. It was not remotely interested in local politics. It did not buy the ticket at the direction of its Japanese parent corporation. Respondent thought, and was so informed, that the campaign contribution was legal, proper, and innocent.

By reason of the foregoing, we respectfully request that the Office of the General Counsel agree not to take action against Respondent and recommend the same to the Federal Election Commission.

Sincerely yours,

Albert Ogawa

Albert Ogawa
Attorney for Respondent
Tobishima Pacific, Inc.

AHO:sp
Enclosure
9638s

9404357249

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF	)	MUR 2892
	)	
TOBISHIMA PACIFIC, INC.	)	
	)	

Respondent TOBISHIMA PACIFIC, INC. submits the following answers to the Federal Election Commission's Interrogatories and Request for Production of Documents.

Interrogatories:

1. State your name, local address, business, and where you are incorporated.

Answer Tobishima Pacific, Inc.
Bishop Square, Suite 1140
1001 Bishop Street
Honolulu, Hawaii 96813

Real Estate Development
Incorporated in the State of Hawaii

2. Identify all officers and directors.

Answer At the time of the alleged violation, Respondent's officers and directors were as follows:

Akira Tobishima, Chairman of the Board, Director
Kiichi Yoshida, President, Director
Kunio Maeda, Vice President, Director
Tetsuo Fukuda, Treasurer, Director
Tokuzo Sase, Secretary, Director

All of the above-named persons are Japanese nationals.

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Messers. Tobishima, Yoshida, Maeda's business and residence addresses are in Japan.

Mr. Fukuda's residence address is 2499 Kapiolani Boulevard, #1508, Honolulu, Hawaii, 96826 ((808) 946-5881). His business address is at Tobishima Pacific, Inc. (see #1) ((808) 521-4787).

Mr. Sase's residence address is 3138 Waialae Avenue, #913, Honolulu, Hawaii, 96816. His business address is Nanatomi Hawaii, Inc., 735 Bishop Street, #401, Honolulu, Hawaii, 96813 ((808) 521-6812). He is no longer associated with Respondent.

3. Identify all management personnel.

Answer At the time of the alleged violation, Respondent's management personnel were as follows:

Tetsuo Fukuda - General Manager/Admin. Manager
Tokuzo Sase - Development and Planning Manager

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

Answer Tobishima Corporation, incorporated in Japan, owns 100% of the shares of Respondent.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

Answer On or about September 4, 1987, Respondent made one political contribution in the amount of $250 to the local election campaign Friends for Fasi.

On or about August 25, 1989, the above-described $250 contribution was refunded.

Respondent is not required to file reports with any state election board.

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6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to the interrogatories one or two, identify such persons.

Answer Tetsuo Fukuda.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

Answer The $250 came from Respondent's ordinary working fund which consisted of funds borrowed from a consortium of banks located in the United States.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

Answer No.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

Answer No.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

Answer Tetsuo Fukuda. Mr. Fukuda has been associated with Respondent since its 1985 incorporation. Mr. Fukuda has held the positions of Director, Treasurer, General Manager/Administrative Manager.

Request for Production of Documents:

Respondent is not required to file any election reports with any government agency and has no such reports.

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STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

TETSUO FUKUDA, being first duly sworn on oath, deposes and says: That the foregoing answers to the Federal Election Commission's Interrogatories and Request for Production of Documents are true to the best of his knowledge and belief.

TETSUO FUKUDA

Subscribed and sworn to before me
this 8th day of June, 1990.

Notary Public, State of Hawaii

My Commission expires: 9/15/91

9603s

9404357295 3

ATTORNEYS AT LAW

Ikazaki
Devens
Lo
Youth
&Nakano

Suite 1600 Central Pacific Plaza
220 South King Street
Honolulu, Hawaii 96813
Telephone (808) 521-1456
Cable Address "Whiteacre"
Fax (808) 538-3289

* Herbert T. Ikazaki
* Paul Devens
* Richard C. Lo
* Wilfred H. C. Youth
* James A. Nakano
* Russell K. Saito

Paula Devens
James [illegible]
Thomas Y. Wong
John T. Hoshibata

Stanley L. Ching
[illegible] Inagaki
[illegible]
Ann S. Isobe

*A Law Corporation

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUN 18 PM 3:54

June 12, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

General Counsel
Federal Election Commission
Room 659
999 E Street, N.W.
Washington, D.C. 20463

Attention: Ms. Patty Reilly

Re: MUR 2892
Longevity International Enterprises Corporation

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 18 PM 3:54

Gentlemen:

We are in receipt of your letter dated May 21, 1990 which was received by this office on May 29, 1990. As set forth in the letter, we are submitting to the General Counsel's office answers to the questions requested and also relevant data relating to this matter.

As set forth in the Commission's analysis of contributions by foreign national, the test appears to be (1) the source of the contribution was from a foreign entity and (2) the decision to make the contribution was directed by a foreign national. As set forth in the documents we are now providing to you, the facts show that the test, as set forth in your analysis, has not been met.

A. Source of Funds Was Not From a Foreign Entity.

As set forth in the data submitted, the data and documents show that the contribution of $250.00 came from the checking account of Longevity's Hawaii operation. The source of funds was not provided by a foreign source as this checking

account is the operating account of Longevity's operations in Honolulu, Hawaii.

B. The Decision to Make the Contribution Was by the General Manager, Who is a Naturalized American Citizen.

As to the decision to make the contribution, that decision was made by the general manager at the time, who was, and is, a naturalized citizen of the United States. Given the relative small size of the donation, no foreign national was involved in this decision to make this contribution.

As we previously set forth in our June 20, 1989 letter, the contribution made by Longevity was an isolated matter as Longevity is not in the habit of making political contributions as it does not have a political action committee nor are funds set aside to make annual political contributions.

We hope we have provided the Commission sufficient information to see that this contribution was an isolated matter and the Commission will dismiss any such action against Longevity.

If you have any further questions, please do not hesitate to contact the undersigned.

Very truly yours,

IKAZAKI, DEVENS, LO, YOUTH
& NAKANO

By _____
Thomas J. Wong

TJW:ln
Enclosures
cc: Longevity International
Enterprises Corporation

2404357295

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	MUR 2892
	)	
LONGEVITY INTERNATIONAL	)	
ENTERPRISES CORPORATION	)	
	)	

RESPONSE OF LONGEVITY INTERNATIONAL ENTERPRISES CORPORATION
TO THE FEDERAL ELECTION COMMISSION'S
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

1. State your name, local address, business, and where you are incorporated.

   Longevity International Enterprises Corporation
   Suite 304
   100 North Beretania Street
   Honolulu, Hawaii 96817

   Business: Owner and operator of The Chinatown Cultural Plaza
   Place of Incorporation: California

2. Identify all officers and directors.

   See Attachment #1 for the officers and directors in 1987 and Attachment #2 for the present officers and directors. Copies of the annual corporate exhibits are filed with the State of California.

3. Identify all management personnel.

   See Attachment #1 for the management personnel in 1987 and Attachment #2 for the present management personnel.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

   Longevity is not a subsidiary of any foreign corporation.

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5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

Other than the contribution made on August 28, 1987, we do not recall making any other political contribution. Nor do we recall receiving any refunds. Longevity was never required to file any report with the State of Hawaii.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

With respect to the August 28, 1987 contribution, the decision was made by Mr. Hsu Chun-I, who was the general manager of The Chinatown Cultural Plaza. Mr. Hsu is a naturalized American citizen.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

The source of funds was from the Longevity checking account with Liberty Bank. These funds were from the operating account of The Chinatown Cultural Plaza and the source of these funds were not provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

No. Longevity does not have such a political action committee since it rarely makes political contributions.

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9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

No such pool of funds are maintained.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

Maybelle Pang is the assistant to Longevity's operations and has held this position since May 1977. Mr. Chang-Jung Tuan is the general manager of Longevity and has been the general manager since 1989.

The Commission requests the following documents: all election reports required to be filed with any government agency.

2 4 0 4 3 5 7 2 9 5 8

State of California
March Fong Eu
Secretary of State

P.O. Box 2830
Sacramento, CA 95812
Phone (916) 445-2020

STATEMENT BY DOMESTIC STOCK CORPORATION

(THIS STATEMENT MUST BE FILED WITH CALIFORNIA SECRETARY OF STATE/SEC. 1005 CORPORATIONS CODE)

A $5 FILING FEE MUST ACCOMPANY THIS STATEMENT.

WHEN COMPLETING FORM, PLEASE USE BLACK TYPEWRITER RIBBON OR BLACK INK

IMPORTANT — Please Read Instructions On Back Of Form

ATTACHMENT #1

Management Staff

Hsu Chun-I - General Manager

Louis Chun Lee Chang - Operations Manager

Bang Chuan Wang - Chief Accountant

1. LONGEVITY INTERNATIONAL ENTERPRISES CORPORATION
100 N. Beretania Street, Suite 304
Honolulu, Hawaii - 96817

DO NOT ALTER PREPRINTED NAME. IF ITEM NO. 1 IS BLANK, PLEASE ENTER COMPLETE NAME

.937

DO NOT WRITE IN THIS SPACE

THE CALIFORNIA CORPORATION NAMED HEREIN, MAKES THE FOLLOWING STATEMENT

2. STREET ADDRESS OF PRINCIPAL EXEC. OFFICE: 100 N. Beretania Street	ROOM NO: 304	2A. CITY & STATE: Honolulu, HI	2B. ZIP CODE: 96817
3. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY: 235 Montgomery Street	ROOM NO: 1815	3A. CITY: San Francisco, CA	3B. ZIP CODE: 94104
4. MAILING ADDRESS: 100 N. Beretania Street	ROOM NO: 304	4A. CITY & STATE: Honolulu, HI	4B. ZIP CODE: 96817

THE NAMES OF THE FOLLOWING OFFICERS ARE:

5. CHIEF EXECUTIVE OFFICER: CHI, Jung-Chun	5A. BUSINESS OR RESIDENCE ADDRESS: 131 Nanking E. Rd., Sec. 3	5B. CITY & STATE: Taipei, Taiwan, Republic of China	5C. ZIP CODE:
6. SECRETARY: Louis Chun-Lee CHANG	6A. BUSINESS OR RESIDENCE ADDRESS: Ste 304, 100 N. Beretania	6B. CITY & STATE: Honolulu, Hawaii	6C. ZIP CODE: 96817
7. CHIEF FINANCIAL OFFICER: Bang-Chuan WANG	7A. BUSINESS OR RESIDENCE ADDRESS: Ste 304, 100 N. Beretania	7B. CITY & STATE: Honolulu, Hawaii	7C. ZIP CODE: 96817

INCUMBENT DIRECTORS, INCLUDING DIRECTORS WHO ARE ALSO OFFICERS (Attach supplemental list if necessary)

8. NAME: WU Yueh	8A. BUSINESS OR RESIDENCE ADDRESS: 131 Nanking E. Rd., Sec. 3	8B. CITY & STATE: Taipei, Taiwan, Republic of China	8C. ZIP CODE:
9. NAME: CHI, Jung-Chun	9A. BUSINESS OR RESIDENCE ADDRESS: 131 Nanking E. Rd., Sec. 3	9B. CITY & STATE: Taipei, Taiwan, Republic of China	9C. ZIP CODE:
10. NAME: Ven-Chung LEE	10A. BUSINESS OR RESIDENCE ADDRESS: 131 Nanking E. Rd., Sec. 3	10B. CITY & STATE: Taipei, Taiwan, Republic of China	10C. ZIP CODE:

11. THE NUMBER OF VACANCIES ON THE BOARD OF DIRECTORS, IF ANY: _____

DESIGNATED AGENT FOR SERVICE OF PROCESS (Only one agent may be named)

12. NAME: C T CORPORATION SYSTEM

13. CALIFORNIA BUSINESS OR RESIDENCE ADDRESS IF AGENT IS AN INDIVIDUAL. DO NOT USE P.O. BOX. DO NOT INCLUDE ADDRESS IF AGENT IS A CORPORATION.

14. DESCRIBE TYPE OF BUSINESS OF THE CORPORATION: Owner and operator of a shopping and dining complex.

15. I DECLARE THAT I HAVE EXAMINED THIS STATEMENT AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IT IS TRUE, CORRECT AND COMPLETE.

Louis Chun-Lee CHANG, Secretary — TYPE OR PRINT NAME OF SIGNING OFFICER OR AGENT — Chang Chun Lee — SIGNATURE — September 16, 1987 — DATE

16. I DECLARE THERE HAS BEEN NO CHANGE IN THE INFORMATION CONTAINED IN THE LAST STATEMENT ON FILE WITH THE SECRETARY OF STATE'S OFFICE. DO NOT ATTACH ON PLAIN PAPER. (READ INSTRUCTIONS BEFORE COMPLETING THIS ITEM)

☐ CHECK HERE — TYPE OR PRINT NAME OF SIGNING OFFICER OR AGENT — SIGNATURE — DATE

SO-300 (REV 3-83)

SUPPLEMENTARY LIST OF DIRECTORS

NAME	BUSINESS/RESIDENCE ADDRESS	CITY & STATE	ZIP CODE
HSU, Chun-I	Ste. 304, 100 N. Beretania	Honolulu, HI	96817
LIEN, Chen-Kang	391 Sutter Street	San Francisco, CA	94108
Jen Fie TUN	20 Valletta Court	San Francisco, CA	94131
Chock Tong HONG	1689 Lewalani Drive	Honolulu, HI	96822

9404357299 59

State of California

March Fong Eu
Secretary of State

P.O. Box 944230
Sacramento CA 94244-0230
Phone (916) 445-2020

STATEMENT BY DOMESTIC STOCK CORPORATION

THIS STATEMENT MUST BE FILED WITH CALIFORNIA SECRETARY OF STATE (SEC. 1502, CORPORATIONS CODE)

A $5 FILING FEE MUST ACCOMPANY THIS STATEMENT

WHEN COMPLETING FORM, PLEASE USE BLACK TYPEWRITER RIBBON OR BLACK INK

IMPORTANT—Please Read Instructions On Back Of Form

1 C0910979 DUE DATE 02-28-90 296179
LONGEVITY INTERNATIONAL ENTERPRISES
CORPORATION
100 N BERETANIA ST #304
HONOLULU, HI 96817

ATTACHMENT #2

Management Staff

Chang-Jung Tuan - General Manager

Karl C.P. Wang - Deputy General Manager

Louis Chun-Lee Chang - Operations Manager

Shen Lee - Chief Accountant

1990

DO NOT WRITE IN THIS SPACE

THE CALIFORNIA CORPORATION NAMED HEREIN, MAKES THE FOLLOWING STATEMENT

2. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE 100 N. Beretania Street	ROOM NO 304	2A. CITY AND STATE Honolulu, HI	2B. ZIP CODE 96817
3. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA 235 Montgomery Street	ROOM NO 1815	3A. CITY San Francisco, CA	3B. ZIP CODE 94104
4. MAILING ADDRESS 100 N. Beretania Street	ROOM NO 303	4A. CITY AND STATE Honolulu, HI	4B. ZIP CODE 96817

THE NAMES OF THE FOLLOWING OFFICERS ARE:

5. CHIEF EXECUTIVE OFFICER CHI, Jung-Chun	5A. STREET ADDRESS (NOT REQUIRED NOW) 131 Nanking E. Rd., Sec. 3	5B. CITY AND STATE Taipei, Taiwan, Republic of	5C. ZIP CODE China
6. SECRETARY Louis Chun-Lee CHANG	6A. STREET ADDRESS (NOT REQUIRED NOW) Suite 304, 100 N. Beretania	6B. CITY AND STATE Honolulu, Hawaii	6C. ZIP CODE 96817
7. CHIEF FINANCIAL OFFICER Bang-Chuan WANG	7A. STREET ADDRESS (NOT REQUIRED NOW) Suite 304, 100 N. Beretania	7B. CITY AND STATE Honolulu, Hawaii	7C. ZIP CODE 96817

INCUMBENT DIRECTORS, INCLUDING DIRECTORS WHO ARE ALSO OFFICERS (Attach supplemental list if necessary)

8. NAME WU, Yueh	8A. STREET ADDRESS (NOT REQUIRED NOW) 131 Nanking E. Rd., Sec. 3	8B. CITY AND STATE Taipei, Taiwan, Republic of	8C. ZIP CODE China
9. NAME CHI, Jung-Chun	9A. STREET ADDRESS (NOT REQUIRED NOW) 131 Nanking E. Rd., Sec. 3	9B. CITY AND STATE Taipei, Taiwan, Republic of	9C. ZIP CODE China
10. NAME Hung-I CHIANG	10A. STREET ADDRESS (NOT REQUIRED NOW) 131 Nanking E. Rd., Sec. 3	10B. CITY AND STATE Taipei, Taiwan, Republic of	10C. ZIP CODE China

11. THE NUMBER OF VACANCIES ON THE BOARD OF DIRECTORS, IF ANY: _____

DESIGNATED AGENT FOR SERVICE OF PROCESS (Only one agent may be named)

12. NAME C. T. Corporation System

13. CALIFORNIA STREET ADDRESS OF AGENT IN CALIFORNIA. DO NOT USE P.O. BOX OR NOT INCLUDE ADDRESS OF AGENT AS A CORPORATION

14. PRINCIPAL LINE OF BUSINESS OF THE CORPORATION (OPTIONAL)
Owner and operator of a shopping and dining complex.

15. I DECLARE THAT I HAVE EXAMINED THIS STATEMENT AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS TRUE, CORRECT AND COMPLETE

Louis Chun-Lee CHANG — Louis C.L. Chang — Secretary — December 18, 1989
TYPE OR PRINT NAME OF OFFICER — SIGNATURE — TITLE — DATE

16. I DECLARE THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION CONTAINED IN THE LAST STATEMENT OF THE CORPORATION HERE IN ON FILE IN THE OFFICE OF SECRETARY OF STATE (READ INSTRUCTIONS BEFORE COMPLETING THIS ITEM)

☐ CHECK HERE

TYPE OR PRINT NAME OF TITLED OFFICER OR AGENT — SIGNATURE — TITLE — DATE

2 200 (REV. 8-89)

SUPPLEMENTARY LIST OF DIRECTORS

NAME	BUSINESS/RESIDENCE ADDRESS	CITY & STATE	ZIP CODE
TUAN, Chang-Jung	Suite 304, 100 N. Beretania	Honolulu, Hawaii	96817
LIN, T. S. George	Ste. 800, 6053 Century Blvd.	Los Angeles, CA	90045
Jen Fie TUN	20 Valletta Court	San Francisco, CA	94131
Chock Tong WONG	1689 Lewalani Drive	Honolulu, Hawaii	96822

9404357296 0

LONGEVITY INTERNATIONAL ENTERPRISES CORPORATION
100 NO. BERETANIA ST., STE. 304
HONOLULU, HAWAII 96817

7449

AUG 28 19 87

89-105
1213

PAY TO THE ORDER OF FRIENDS FOR FASI $ 250.00

*****Two Hundred Fifty and 00/100***** DOLLARS

Main Office
Liberty Bank
99 N King St Hon, HI 96817

FOR donation

B. C. Wang

⑈007449⑈ ⑆121301057⑆ 11⑈045162⑈ ⑈0000025000⑈

2404357299 61

STATE OF HAWAII)
: SS.
CITY AND COUNTY OF HONOLULU)

CHANG-JUNG TUAN, being first duly sworn, on oath, deposes and says: that the foregoing Response of Longevity International Enterprises Corporation to the Federal Election Commission's Interrogatories and Request for Production of Documents are true to the best of his knowledge and belief.

Subscribed and sworn to before me
this 6th day of June,
1990.

Notary Public, State of Hawaii

My commission expires: March 13, 1991

2404357292962

00C 6618

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90 JUN 18 PM 9:06

FUJIYAMA, DUFFY & FUJIYAMA
ATTORNEYS AT LAW, A LAW CORPORATION
SUITE 2700, PAUAHI TOWER, BISHOP SQUARE
1001 BISHOP STREET
HONOLULU, HAWAII 96813

TELEPHONE (808) 536-0802
TELECOPIER (808) 536-5117

WALLACE S. FUJIYAMA
JAMES E. DUFFY, JR.
RODNEY M. FUJIYAMA
JAMES J. STONE
ARCHIE T. IKEHARA
RALPH R. LA FOUNTAINE
COLBERT M. MATSUMOTO
GLENN K. SATO
STEVEN J. T. CHOW
—
DAVID Z. ARAKAWA
LESLIE E. KOBAYASHI
NANCY J. RYAN
SCOTT S. HASHIMOTO
WYNDE M. WAHAMOTO
WILLIAM H. TIN
BRUCE R. CAMPBELL
MARO F. K. FUJIMOTO
DEXTER D. DEL ROSARIO
ROSE H. TAOBAKA
CHRIS A. THOMAS
VINCENT A. RHODES
DIANE K. TAIRA
MICHAEL T. LEE

June 12, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 18 PM 3:51

Office of the General Counsel
Federal Election Commission
Washington, D. C. 20463

Attn: Mr. Michael Troy

Re: MUR 2892
Benjamin J. Cayetano Campaign Committee

Dear Mr. Troy:

This is to inform you that I have been retained by the Cayetano for Lieutenant Governor Campaign Committee to represent it in connection with the above-referenced Complaint. I would also request an extension of time to June 22, 1990 in which to respond to the Complaint filed in the above-referenced matter. This matter was referred to my office for handling on June 6, 1990. I was not contacted earlier since I was out-of-state on a family vacation. I will require additional time in which to respond to the Complaint because I will need time to familiarize myself with the facts and circumstances underlying this matter as well as the applicable law. Your cooperation in this regard would be appreciated.

Very truly yours,

FUJIYAMA, DUFFY & FUJIYAMA
Attorneys At Law, A Law
Corporation

By COLBERT M. MATSUMOTO

CMM:jt/0479

cc: Cayetano for Lieutenant
Governor Campaign Committee

2404357293 63

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

June 21, 1990

Mr. Colbert M. Matsumoto
Fujiyama, Duffy & Fujiyama
Suite 2700 Pauahi Tower
1001 Bishop Street
Honolulu, Hawaii 96813

RE: MUR 2892
Benjamin J. Cayetano Campaign
Committee

Dear Mr. Matsumoto:

This is in response to a letter from your client dated June 12, 1990, which we received on June 18, 1990, designating you as counsel and requesting an extension of time to respond to the above-captioned matter. After considering the circumstances presented in the letter, I have granted the requested extension. Accordingly, your response is due by the close of business on June 22, 1990.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Jonathan Bernstein
Assistant General Counsel

9404357229 64

OGC 6623

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90 JUN 18 PM 9:39

FUJIYAMA, DUFFY & FUJIYAMA
ATTORNEYS AT LAW, A LAW CORPORATION
SUITE 2700, PAUAHI TOWER, BISHOP SQUARE
1001 BISHOP STREET
HONOLULU, HAWAII 96813

TELEPHONE (808) 536 0802
TELECOPIER (808) 536 5117

WALLACE S. FUJIYAMA
JAMES E. DUFFY, JR.
RODNEY M. FUJIYAMA
JAMES J. STONE
ARCHIE T. IKEHARA
RALPH R. LA FOUNTAINE
COLBERT M. MATSUMOTO
GLENN H. SATO
STEVEN J. T. CHON

DAVID Z. ARAKAWA
LESLIE E. KOBAYASHI
NANCY J. RYAN

SCOTT S. HASHIMOTO
WYNDE M. YAMAMOTO
WILLIAM H. TIM
BRUCE R. CAMPBELL
WARD F. N. FUJIMOTO
DEXTER D. DEL ROSARIO
ROSS N. TAOSAKA
CHRIS A. THOMAS
VINCENT A. RHODES
DIANE K. TAIRA
MICHAEL T. LEE
DOUGLAS H. KNOWLTON

June 14, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

90 JUN 18 PM 3:52

Office of the General Counsel
Federal Election Commission
Washington, D. C. 20463

Attn: Mr. Michael Troy

Re: MUR 2892
Benjamin J. Cayetano Campaign Committee

Dear Mr. Troy:

Please find enclosed herewith the Statement of Designation of Counsel by the Benjamin J. Cayetano Campaign Committee in connection with the above-referenced matter.

Please contact me if you should have any questions.

Very truly yours,

FUJIYAMA, DUFFY & FUJIYAMA
Attorneys At Law, A Law
Corporation

By COLBERT M. MATSUMOTO

CMM:jt

Enclosure

2404357229 65

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2846 / MUR 2892

NAME OF COUNSEL: Colbert M. Matsumoto

ADDRESS: Pauahi Tower, Suite 2700
1001 Bishop Street
Honolulu, HI 96813

TELEPHONE: (808) 536-0802

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

6/13/90
Date

Benjamin J. Cayetano
Signature

RESPONDENT'S NAME: Benjamin J. Cayetano Campaign Committee

ADDRESS: P. O. Box 3039
Mililani, HI 96789-3039

HOME PHONE: 625-2123

BUSINESS PHONE: 548-2086

9404357296 6

06C 6604

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90 JUN 18 PM 3:50

CARLSMITH, WICHMAN, CASE, MUKAI AND ICHIKI
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING LAW CORPORATIONS
1001 BISHOP STREET
PACIFIC TOWER, SUITE 2200
HONOLULU, HAWAII 96813
CABLE ADDRESS CWCMI
TELEX 723-8770 CWCMI HR
TELECOPIER (808) 523-0842

HONOLULU OFFICE
P. O. BOX 656
HONOLULU, HAWAII 96809
(808) 523-2500

GUAM OFFICE
P. O. BOX BF
AGANA, GUAM 96910
(671) 472-6813
TELEX 721-8445 CWCM GM

LOS ANGELES OFFICE
P. O. BOX 7169
LOS ANGELES, CALIFORNIA 90071-0169
(213) 955-1200

HILO OFFICE
P. O. BOX 686
HILO, HAWAII 96721-0686
(808) 935-6644

KONA OFFICE
P. O. BOX 1720
KAILUA-KONA, HAWAII 96745-1720
(808) 329-6464

MAUI OFFICE
P. O. BOX 1086
WAILUKU, HAWAII 96793
(808) 242-4535

SAIPAN OFFICE
P. O. BOX 241 CHRB
SAIPAN, MP 96950
(670) 322-3455
TELEX 783-658 CWC SPN

DIRECT DIAL NUMBER:
(808) 523-2535

June 12, 1990

90 JUN 18 PM 3:48
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

VIA TELECOPIER
AND REGULAR MAIL

Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Attention: Patty Reilly, Esq.

Re: MUR 2892/Taiyo Hawaii Company, Ltd.

Gentlemen:

We are responding to your letter dated May 21, 1990, which we received on May 29, 1990. Pursuant to 11 C.F.R. § 111.18(d), Taiyo Hawaii Company, Ltd. hereby requests that the parties pursue pre-probable cause conciliation. Please advise us as soon as possible whether the Office of General Counsel will be recommending acceptance of Taiyo Hawaii Company, Ltd.'s request for pre-probable cause conciliation. Taiyo Hawaii Company, Ltd. wishes to fully cooperate with the Commission in connection with this matter. If you have any questions or require additional information, please contact the undersigned. Thank you for your cooperation and we shall await your response.

Very truly yours,

Karl K. Kobayashi

Karl K. Kobayashi

KK:cai
cc: Taiyo Hawaii Company, Ltd.

X9020522

24434572707

OGC 6605

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUN 18 AM 10:00

CARLSMITH, WICHMAN, CASE, MUKAI AND ICHIKI
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING LAW CORPORATIONS
1001 BISHOP STREET
PACIFIC TOWER, SUITE 2200
HONOLULU, HAWAII 96813
CABLE ADDRESS CWCMI
TELEX 723-8770 CWCMI HR
TELECOPIER (808) 523-0842

HONOLULU OFFICE
P. O. BOX 656
HONOLULU, HAWAII 96809
(808) 523-2500

GUAM OFFICE
P. O. BOX 8F
AGANA, GUAM 96910
(671) 472-6813
TELEX 72-6445 CWCM GU

LOS ANGELES OFFICE
P. O. BOX 7169
LOS ANGELES, CALIFORNIA 90071-0169
(213) 955-1200

DIRECT DIAL NUMBER:
(808) 523-2535

HILO OFFICE
HILO, HAWAII 96721-0686
(808) 935-6644

KONA OFFICE
P. O. BOX 1720
KAILUA-KONA, HAWAII 96745-1720
(808) 329-6464

MAUI OFFICE
P. O. BOX 1086
WAILUKU, HAWAII 96793
(808) 242-4535

SAIPAN OFFICE
P. O. BOX 24 CHRB
SAIPAN, MP 96950
(670) 322-3455
TELEX 783-658 CWCM SPN

June 12, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 18 PM 3:48

VIA TELECOPIER
AND REGULAR MAIL

Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Attention: Patty Reilly, Esq.

Re: MUR 2892/Hawaii Omori Corporation

Gentlemen:

We are responding to your letter dated May 21, 1990, which we received on May 29, 1990. Pursuant to 11 C.F.R. § 111.18(d), Hawaii Omori Corporation hereby requests that the parties pursue pre-probable cause conciliation. Please advise us as soon as possible whether the Office of General Counsel will be recommending acceptance of Hawaii Omori Corporation's request for pre-probable cause conciliation. Hawaii Omori Corporation wishes to fully cooperate with the Commission in connection with this matter. If you have any questions or require additional information, please contact the undersigned. Thank you for your cooperation and we shall await your response.

Very truly yours,

Karl K. Kobayashi

Karl K. Kobayashi

KK:cai
cc: Hawaii Omori Corporation

X9020525

2 4 1 4 3 5 7 2 9 1 8

OGC 6601

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90 JUN 18 PM 3:16

CARLSMITH, WICHMAN, CASE, MUKAI AND ICHIKI
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING LAW CORPORATIONS
1001 BISHOP STREET
PACIFIC TOWER, SUITE 2200
HONOLULU, HAWAII 96813
CABLE ADDRESS: CWCMI
TELEX 723-8770 CWCMI HR
TELECOPIER (808) 523-0842

HONOLULU OFFICE
P. O. BOX 656
HONOLULU, HAWAII 96809
(808) 523-2500

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AGANA, GUAM 96910
(671) 472-6813
TELEX 721-6445 CWCM GU

LOS ANGELES OFFICE
P. O. BOX 7169
LOS ANGELES, CALIFORNIA 90071-0169
(213) 955-1200

DIRECT DIAL NUMBER:
(808) 523-2535

HILO OFFICE
P. O. BOX 686
HILO, HAWAII 96721-0686
(808) 935-6644

KONA OFFICE
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KAILUA-KONA, HAWAII 96745-1720
(808) 329-6464

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WAILUKU, HAWAII 96793
(808) 242-4535

SAIPAN OFFICE
P. O. BOX 241 CHRB
SAIPAN, MP 96950
(670) 322-3455
TELEX 783-658 CWCMI SPN

June 12, 1990

VIA TELECOPIER
AND REGULAR MAIL

Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Attention: Patty Reilly, Esq.

Re: MUR 2892/Nitto Hawaii Co., Ltd.

Gentlemen:

We are responding to your letter dated May 21, 1990, which we received on May 29, 1990. Pursuant to 11 C.F.R. § 111.18(d), Nitto Hawaii Co., Ltd. hereby requests that the parties pursue pre-probable cause conciliation. Please advise us as soon as possible whether the Office of General Counsel will be recommending acceptance of Nitto Hawaii Co., Ltd.'s request for pre-probable cause conciliation. Nitto Hawaii Co., Ltd. wishes to fully cooperate with the Commission in connection with this matter. If you have any questions or require additional information, please contact the undersigned. Thank you for your cooperation and we shall await your response.

Very truly yours,

Karl K. Kobayashi

KK:cai
cc: Nitto Hawaii Co., Ltd.

X9020524

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 18 PM 3:47

9404357299

OGC 6594

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUN 18 PM 9:55

CARLSMITH, WICHMAN, CASE, MUKAI AND ICHIKI
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING LAW CORPORATIONS
1001 BISHOP STREET
PACIFIC TOWER, SUITE 2200
HONOLULU, HAWAII 96813
CABLE ADDRESS: CWCMI
TELEX 723-8770 CWCMI HR
TELECOPIER (808) 523-0842

HONOLULU OFFICE:
P. O. BOX 656
HONOLULU, HAWAII 96809
(808) 523-2500

GUAM OFFICE:
P. O. BOX BF
AGANA, GUAM 96910
(671) 472-6813
TELEX 721-6445 CWCMI GM

LOS ANGELES OFFICE
P. O. BOX 7169
LOS ANGELES, CALIFORNIA 90071-0169
(213) 955-1200

DIRECT DIAL NUMBER:
(808) 523-2535

HILO, HAWAII 96721-0686
(808) 935-6644

KONA OFFICE
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(808) 329-6464

MAUI OFFICE:
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WAILUKU, HAWAII 96793
(808) 242-4535

SAIPAN OFFICE
P. O. BOX 24 CHRB
SAIPAN, MP 96950
(670) 322-3455
TELEX 783-658 CWCMI SPN

June 12, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 18 PM 3:50

VIA TELECOPIER
AND REGULAR MAIL

Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Attention: Patty Reilly, Esq.

Re: MUR 2846 and MUR 2892/
Pan-Pacific Development, Inc.

Gentlemen:

We are responding to your letter dated May 21, 1990, which we received on May 29, 1990. Pursuant to 11 C.F.R. § 111.18(d), Pan-Pacific Development, Inc. hereby requests that the parties pursue pre-probable cause conciliation. Please advise us as soon as possible whether the Office of General Counsel will be recommending acceptance of Pan-Pacific Development, Inc.'s request for pre-probable cause conciliation. Pan-Pacific Development, Inc. wishes to fully cooperate with the Commission in connection with this matter. If you have any questions or require additional information,

2 4 9 4 3 5 7 2 7 0

X9020520

please contact the undersigned. Thank you for your cooperation and we shall await your response.

Very truly yours,

Karl K. Kobayashi

KK:cai
cc: Pan-Pacific Development, Inc.

9404357291

X9020520

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

90 JUN 12 AM 9:20

BEFORE THE FEDERAL ELECTION COMMISSION **SENSITIVE**

In the Matter of	)	
	)	MUR 2892
Japan Travel Bureau International Inc.	)	
Jet Hawaii, Inc.	)	
Pan-Pacific Construction, Inc.[1]	)	
Masao Hayashi	)	

GENERAL COUNSEL'S REPORT

I. **BACKGROUND**

On May 1, 1990, the Commission found reason to believe Japan Travel Bureau International, Inc., Jet Hawaii Inc., Pan-Pacific Construction, Inc., and Masao Hayashi violated 2 U.S.C. § 441e.[2] At the same time, the Commission approved sample questions to be sent to the named parties. None of the parties in question have submitted answers to those questions, which were sent to them on May 21, 1990.

On June 1, 1990 the above named parties requested conciliation prior to a finding of probable cause to believe.

2404357297 2

1. The attorney representing Pan-Pacific Construction, Inc. and Jet Hawaii, Inc. stated in the text of both letters that Jet Hawaii, Inc. was requesting pre-probable cause conciliation (Att. 1, pp. 1, 2). A phone call to the attorney confirmed that the letter regarding Pan-Pacific Construction, Inc. should have requested pre-probable cause conciliation for Pan-Pacific Construction, Inc., not Jet Hawaii, Inc.

2. At the same time, the Commission found reason to believe that several other respondents also violated 2 U.S.C. § 441e. At this time, none of the others have requested conciliation prior to a finding of probable cause to believe. One of the respondents, International Commercial Bank of China asked, "whether a 'pre-probable cause conciliation' is possible without admitting to nor denying a violation of the Act." Counsel for International Commercial Bank of China was informed by phone that it was not the Commission's policy to enter into a conciliation agreement in which the respondent did not admit to the violation.

Masao Hayashi has also requested an extension of time to answer the aforementioned questions.

II. ANALYSIS

Because respondents have not submitted answers to the questions sent to them, this Office recommends that the Commission deny respondents' requests for conciliation at this time. After receiving answers to the questions, this Office will report to the Commission.

III. RECOMMENDATIONS

1. Decline, at this time, to enter into conciliation with Japan Travel Bureau International Inc., Jet Hawaii, Inc., Pan-Pacific Construction, Inc., and Masao Hayashi prior to a finding of probable cause to believe.

2. Approve the attached letters.

Date 6/11/90

Lawrence M. Noble
General Counsel

Attachments
1. Requests for Conciliation
2. Letters

Staff Assigned: Michael J. Troy

2 4 0 4 3 5 7 2 9 7 3

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Japan Travel Bureau International Inc.	)	MUR 2892
Jet Hawaii, Inc.	)	
Pan-Pacific Construction, Inc.	)	
Masao Hayashi	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 14, 1990, the Commission decided by a vote of 5-0 to take the following actions in MUR 2892:

1. Decline, at this time, to enter into conciliation with Japan Travel Bureau International Inc., Jet Hawaii, Inc., Pan-Pacific Construction, Inc., and Masao Hayashi prior to a finding of probable cause to believe.

2. Approve the letters, as recommended in the General Counsel's report dated June 11, 1990.

Commissioners Aikens, Elliott, Josefiak, McDonald, and McGarry voted affirmatively for the decision; Commissioner Thomas did not cast a vote.

Attest:

June 14, 1990
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Tuesday, June 12, 1990 9:20 a.m.
Circulated to the Commission: Tuesday, June 12, 1990 11:00 a.m.
Deadline for vote: Wednesday, June 14, 1990 11:00 a.m.

dh

9404357297 4

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

June 18, 1990

Mr. Michael K. Tanigawa
Tanigawa & Tanigawa
Suite 1550 Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813

RE: MUR: 2892
Masao Hayashi
Japan Travel Bureau
International, Inc.

Dear Mr. Tanigawa:

On May 21, 1990 you were notified that the Federal Election Commission found reason to believe that your clients, Masao Hayashi and Japan Travel Bureau International, Inc., violated 2 U.S.C. § 441e. On June 1, 1990, you submitted a request to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has reviewed your request and determined to decline at this time to enter into conciliation prior to a finding of probable cause to believe because additional information is necessary. We must receive full and complete answers to the interrogatories sent to you on May 21, 1990 before the Commission can consider your request for conciliation negotiations. Such information should be submitted to the Office of the General Counsel by the time specified in those letters.

At such time when the investigation in this matter has been completed, the Commission will reconsider your request to enter into conciliation prior to a finding of probable cause to believe.

2404357297 5

If you have any questions, please contact Michael J. Troy, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois Lerner
Associate General Counsel

24043572976

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

June 18, 1990

Mr. Karl K. Kobayashi
Carlsmith, Wichman, Case, Mukai, and Ichiki
1001 Bishop Street
Pacific Tower, Suite 2200
Honolulu, Hawaii 96813

RE: MUR: 2892
Jet Hawaii, Inc.
Pan-Pacific Construction, Inc.

Dear Mr. Kobayashi:

On May 21, 1990 you were notified that the Federal Election Commission found reason to believe that your clients, Jet Hawaii, Inc. and Pan-Pacific Construction, Inc., violated 2 U.S.C. § 441e. On June 5, 1990, you submitted requests of behalf of your clients to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has reviewed your requests and determined to decline at this time to enter into conciliation prior to a finding of probable cause to believe because additional information is necessary. We must receive full and complete answers to the interrogatories sent to you on May 21, 1990 before the Commission can consider your requests for conciliation negotiations. Such information should be submitted to the Office of the General Counsel by the time specified in those letters.

At such time when the investigation in this matter has been completed, the Commission will reconsider your requests to enter into conciliation prior to a finding of probable cause to believe.

9404357297 7

If you have any questions, please contact Michael J. Troy, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois Lerner
Associate General Counsel

24043572978

DOC 6673

OKUMURA TAKUSHI FUNAKI & WEE
ATTORNEYS AT LAW
A LAW CORPORATION

SUITE 1400
GROSVENOR CENTER
733 BISHOP STREET
HONOLULU, HAWAII 96813

TELEPHONE (808) 543-9800
FACSIMILE (808) 599-1960

SUYEKI OKUMURA
ROY E. TAKUSHI
JAMES T. FUNAKI
JOSEPH K. WEE
SHUICHI MIYASAKI
ALFRED M. K. WONG
ROBERT M. EHRHORN, JR.
DICKSON C. H. LEE
PETER T. STONE
JAMES N. H. YEE
AARON S. H. YOO

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUN 21 AM 10:38

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 21 PM 3:47

June 18, 1990

Federal Election Commission
999 E Street NW
Washington, D. C. 20463

VIA FAX AND
REGULAR MAIL

Attention: Patty Reilly, Esq.

Re: MUR 2892
Universal Express Co. (Hawaii), Ltd.

Dear Ms. Reilly:

Pursuant the FEC's letter of June 13 granting an extension of the time to respond to the interrogatories in the above-referenced case to June 20, 1990, enclosed please find the Answers to Interrogatories for Universal Express (Hawaii), Ltd.

A copy of this letter and the answers are being faxed to you; the originals are being mailed to you today.

Very truly yours,

OKUMURA TAKUSHI FUNAKI & WEE
ATTORNEYS AT LAW
A LAW CORPORATION

By Eleyn S. Muku
for Dickson C. H. Lee

DCHL:en

Enclosure

cc: Universal Express Co. (Hawaii), Ltd.

5015V/17

2404357299

BEFORE THE FEDERAL ELECTION COMMISSION

In re Universal Express Co. (Hawaii), Ltd.	)	MUR 2892

ANSWERS TO INTERROGATORIES

Respondent Universal Express Co. (Hawaii), Ltd. ("Respondent") responds to the Interrogatories of the Federal Election Commission ("Commission") as follows:

1. State your name, local address, business, and where you are incorporated.

   Universal Express Co. (Hawaii), Ltd.
   a Hawaii corporation doing business as the Park Shore Hotel
   2586 Kalakaua Avenue
   Honolulu, Hawaii 96815

2. Identify all officers and directors.

Name	Nationality	Position
Takeshi Watanabe 2-3-2 Izumi-cho Mito Ibaragi Japan	Japanese	President/Director
Masatoshi Nitta 2586 Kalakaua Ave Honolulu, Hawaii	Permanent resident alien in the United States since 1973	Vice President/ Director

3. Identify all management personnel

Name	Nationality	Position
Masatoshi Nitta 2586 Kalakaua Ave Honolulu, Hawaii	Permanent resident alien in the United States since 1973	General Manager

4. State whether you are a subsidiary of any entity. If so, identify all entitities with ownership rights.

   The respondent's parent corporation is a Japanese corporation:

   Japan Universal Company, Ltd.
   2-3-2 Izumi-cho
   Mito Ibaragi, Japan

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5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

Respondent has not made any contributions to campaigns of candidates for federal elections. Respondent made the following contribution to the campaigns of the following candidate for local election:

Date	Amount	Recipient (Campaign of)	Returned
7/87	$500	Frank Fasi	9/89

Respondent has not made any other contributions to state or local elections.

Except as reported by the candidate's campaign committee, Respondent has not filed a separate report with a state election board with respect to the foregoing contribution.

6. Identify all persons who participated in making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

Name	Nationality	Position
Masatoshi Nitta 2586 Kalakaua Ave Honolulu, Hawaii	Permanent resident alien in the United States since 1973	General Manager

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

The contribution was made with funds derived from the operations of the Park Shore Hotel in Honolulu, Hawaii. No funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

Not applicable. Respondent does not maintain a political action committee.

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9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

Not applicable. Respondent does not maintain a pool of funds specified for election activity.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

Name	Nationality	Position
Masatoshi Nitta 2586 Kalakaua Ave Honolulu, Hawaii	Permanent resident alien in the United States since 1973	Vice President General Manager since 1976

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STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

MASATOSHI NITTA, being first duly sworn under oath, deposes and says that he has read the foregoing Answers to Interrogatories and the same are true to the best of his knowledge and belief.

MASATOSHI NITTA

Subscribed and sworn to before me
this 18th day June, 1990.

Nancy B Cayetano
Notary Public, State of Hawaii

My commission expires: MAY 27, 1992

2404357229 83

OGC 6668

CHUCK JONES AND MACLAREN
ATTORNEYS AT LAW
A PARTNERSHIP OF LAW CORPORATIONS
CITY FINANCIAL TOWER
SUITE 2210, 201 MERCHANT STREET
HONOLULU, HAWAII 96813-2929
TELEPHONE: (808) 533-3614
TELECOPIER: (808) 536-5617
TELEX: 8502867858 MCIUW

W. GREGORY CHUCK*
WARD D. JONES*
ALEXANDER T. MACLAREN*
*A LAW CORPORATION

WALTER G. CHUCK*
OF COUNSEL

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT
90 JUN 20 PM 5:02

June 12, 1990

Federal Election Commission
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 21 PM 2:00

Attention: Lee Ann Elliott, Chairman

Re: MUR 2892 - Pearl Country Club of Hawaii

Dear Ms. Elliott:

Please find enclosed the following:

1. Letter dated August 11, 1987 from "Friends for Fasi" to Mr. Masayoshi Yashima of the Pearl Country Club with translation in Japanese.

2. Check payable to "Friends for Fasi" in the amount of $250.00 drawn from Pearl Country Club of Hawaii, City Bank account, and executed by M. Yashima.

3. Receipt for the same check describing the $250.00 as being used for "an evening with mayor," August 29, 1987.

4. Copy of check payable to the Pearl Country Club of Hawaii from the "Friends for Fasi" dated August 25, 1989 in the amount of $250.00 as a return of contribution.

Further to my letter of June 16, 1989 to Lawrence M. Noble, general counsel (a copy of which is enclosed for your reference), I would add that no action should be taken against my client because the contribution constituting the subject of complaint has been returned by the Fasi committee to my client as of August 25, 1989. Furthermore, the contribution was originally made from Pearl Country Club golf course operating capital. Pearl's operating capital comes directly from golf course revenues (primarily green fees, golf cart fees) generated in Hawaii from public play. Pearl Country Club enjoys over 90% use by Hawaii

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residents, does not sell or offer private memberships either domestic or foreign, and is a totally public course open to all. Honda Kaihatsu Kogyo, a Japanese corporation, did not therefore originate or generate the contribution funds; rather, the funds came from the Hawaii golf course business. Finally, although Mr. Masayoshi Yashima, a Japanese national and the general manager of the country club, did execute the original contribution check, he did so only after consultation with Mr. Albert Ogata, a U.S. citizen and the assistant general manager. Therefore, it cannot be said that the discretionary decision to make said contribution was solely that of a foreign national. Naturally because Mr. Ogata, having been born and raised in Hawaii, is more knowledgeable and sensitive to the needs of the state as well as the political climate played an integral part in the decision.

We trust that the enclosed documents adequately respond to the request for production of documents. To respond to the interrogatories propounded, Pearl Country Club of Hawaii is a tradename registered under Honda Kaihatsu Kogyo, a Japanese corporation. Pearl is not a corporation or partnership. Pearl does not maintain a political action committee and this Fasi contribution was its only political contribution. It has never made any contribution to the Governor John Waihee Campaign Fund.

In conclusion, we therefore reiterate our request that no action be taken against our client or that, at worse, a reprimand be issued.

If I may be of further information, please do not hesitate to write or call.

Yours truly,

Ward D. Jones

WARD D. JONES
Attorney for Honda Kaihatsu Kogyo dba
Pearl Country Club

WDJ:lmc
Enclosures

cc: Masayoshi Yashima
Albert Ogata

2 4 0 4 3 5 7 2 9 8 5

FRIENDS FOR
Fasi
100 N. BERETANIA ST. SUITE 203
HONOLULU, HAWAII 96817
PH: (808) 521-1031

August 11, 1987

COPY

Mr. Masayoshi Yashima
General Manager
Pearl Country Club
98-535 Kaonohi Street
Aiea, Hawaii 96701

Dear Mr. Yashima:

Mayor Frank Fasi will be having a fundraising cocktail on Saturday, August 29, 1987, from 6:00 to 8:00 p.m., at the Blaisdell Exhibition Hall. This will be his major fundraising event for his re-election campaign.

He has served as Honolulu's Mayor for 15 years and has a reputation of "getting the job done". As a successful businessman he knows how costly and time consuming it is to deal with government red tape and is trying to correct the situation. Ordinary citizens as well as businessmen have found Mayor Fasi to be fair to all who deal with the city government.

Campaigns are expensive, especially to cover the cost of television and printed media, and we are counting on friends like you to help us raise the money we need. The Mayor will win again because of his hard work, record of accomplishment and commitment to the people.

According to the State Campaign Spending Laws, any corporation, member of a corporation, and/or individual may contribute $2,000 for each election. Tickets to this event are $250 each. We hope you will talk to people in your company as well as to your friends and ask them to help.

If we can count on you as a supporter and contributor, please fill in the enclosed card. We look forward to seeing you on August 29th.

Sincerely,

GEORGE HONG
Friends for Fasi

GH:ms
Enclosure

9404357298 6

FRIENDS FOR
Fasi
100 N. BERETANIA ST. SUITE 203
HONOLULU, HAWAII 96817
PH: (808) 521-1031

COPY

ハワイ進出日本企業

代表者各位

拝啓

貴社益々御繁栄の事と心よりお喜び申し上げます。

さて、今度フランク　ファシー現市長の"選挙支援の夕べ"が8月29日（土曜日）ブレジデル　センター　エキジビションホールに於いて6時〜8時の間、開催される事に成りました。これを来年度の市長選挙再選にむける強力なる後援会結成の催しにしたいと存じます。

経済界の一員として彼は如何に人と人のつながりが大切か、また無駄な時間と費用を節約するかを知って居ります。そして市政府の手続を簡素化し、迅速なサービスに改善して参りました。　過去15年間市長として『仕事を最後までやりとげる』事を目標に数々の功績を残して参りました。

選挙には非常に大きな種々の費用が必要であり、皆様方の協力なしでは充分な活動は出来ません。しかしいかなる事があろうとも現市長が再選される事は信じて疑う余地が無いのもご承知の通りです。

尚、チケットは1枚250ドルですが、州選挙規定により各社及び各個人はそれぞれ2000ドルまでの献金が認められて居ります。

皆様方の温かい御支援を心よりお願い申し上げます。

敬具

1987年8月11日

フランク　ファシー後援会会長

ジョージ　ホング

7404357729987

COPY

PEARL COUNTRY CLUB OF HAWAII
95-535 KAONOHI ST. 487-2400
AIEA, HAWAII 96701

CITY BANK
MAIN OFFICE

5709

August 19, 87

PAY **********Two Hundred Fifty and 00/100********** DOLLARS $ 250.00*

TO THE ORDER OF

Friends for Fasi
100 No. Beretania St., Suite 203
Honolulu, Hawaii 96817-9956

NOT NEGOTIABLE

⑈005709⑈ ⑆121301591⑆ 0107999⑈01

PEARL COUNTRY CLUB OF HAWAII

DELUXE FORM WVC-3 V-7

For Mr. Masayoshi Yashima, General Manager
Pearl Country Club an Evening with the Mayor
August 29, 1987 -- 6-8 p.m.

$250.00*

COPY

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MASAYOSHI YASHIMA

RECEIPT Date 8-20 1987 5460

Received From PEARL COUNTRY CLUB OF HAWAII

Address 98-535 KAONOHI ST.

AIEA 96701 Dollars $ 250.00

For Ticket 11862

w/ bill

ACCOUNT			HOW PAID		
AMT. OF ACCOUNT			CASH		
AMT. PAID			CHECK		✓
BALANCE DUE			MONEY ORDER		

FRIENDS FOR FASI

By

FRIENDS FOR FABI

No. 80

Aug. 23, 1989

Pay to the Order of: Pearl Country Club of Hawaii $ 250.00

Two Hundred Fifty and no/100 DOLLARS

[redacted]

FOR Retreat Contribution

⑆121301057⑆ 18-005505⑈

3404357299 0

CHUCK JONES AND MACLAREN
ATTORNEYS AT LAW
A PARTNERSHIP OF LAW CORPORATIONS

W. GREGORY CHUCK*
WARD D. JONES*
ALEXANDER T. MACLAREN*
DONN R. FUDO
*A LAW CORPORATION

SUITE 1914, 745 FORT STREET
HONOLULU, HAWAII 96813-3818
TELEPHONE: (808) 533-3614
TELECOPIER: (808) 536-5617
TELEX: 6502667658 MCIUW

WALTER G. CHUCK*
OF COUNSEL

June 16, 1989

Federal Election Commission
Washington, D.C. 20463

Attention: Lawrence M. Noble, General Counsel
Lois G. Lerner, Associate General Counsel
Patty Reilly, Esq.

Re: MUR 2892 - Pearl Country Club of Hawaii

To whom it may concern:

We are the attorneys for Honda Kaihatsu Kogyo Co., Ltd. dba Pearl Country Club of Hawaii. Please find enclosed a Statement of Designation of Counsel. We've been asked to respond to your letter of June 6, 1989 regarding alleged violations of the Federal Election Campaign Act of 1971 as amended.

We would respectfully submit that no action should be taken against our clients arising out of a $250.00 contribution to the Frank Fasi Mayoral Campaign, for the reasons which follow. First, the Federal Election Campaign Act of 1971 as amended was enacted primarily to impose limitations upon giving and spending of money in political campaigns for federal offices in order to limit the actuality and appearance of corruption resulting in large individual financial contributions. Buckley v. Valeo, 426 U.S. 1, 46 L.Ed 2d 659, 96 Sup. Crt. 612 (1976). The courts in interpreting the U.S. Constitution, have specifically held that Congress may not regulate purely state or local elections. U.S. v. Bowman, 636 F.2d 1003 (Crt. of Appeals La. 1981); U.S. Constitution, Article I, Section 4, Clause 8; Article I, Section 8, Clause 18; Tenth Amendment, U.S. Constitution. Moreover, under 2 U.S.C.S. §431(8)(a)(i), a "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any

9404357299 1

election for federal office. Because the complained of contribution was to a Honolulu City and County mayoral campaign fundraiser, clearly this falls outside of the letter and spirit of the act and would be contrary to the reserved powers granted exclusively to the state government under the U.S. Constitution. Therefore, we must take issue with any contemplated action by the Commission with respect to our client pursuant to the act as legally baseless.

Second, we must point out that our client, Honda-Kaihatsu, although a Japanese corporation, is the owner of and has registered the Pearl Country Club of Hawaii as a Hawaii business. Pearl Country Club's principal place of business is in Hawaii, not Japan. 2 U.S.C.S. §441E(b) specifically defines "foreign national" as, among other things, a corporation, organization, or other combination of persons organized under the laws or having its principal place of business in a foreign country. (cross-referencing 23 U.S.C.S. §611(b)(3)). Pearl Country Club as a business operates under Hawaii law and, because it is a golf course, pro shop and restaurant, operates principally on Oahu, City and County of Honolulu, State of Hawaii. It was not the likely intent of the drafters of section 441E to prohibit a local organization such as Pearl Country Club from contributing to a campaign in the same voting district considering the fact that the mayor's jurisdiction is limited to the City and County of Honolulu. For this reason, we believe our clients under these facts do not fall into the category of foreign principals for purposes of the act.

Even if by some stretch of the imagination, the act were to be applied to our situation, to our knowledge it is the first time our client has ever been the subject of a complaint filed with the Federal Election Campaign Commission and is a fairly de minimus violation of $250.00. The alleged violation certainly was not a product of any willful or intentional conduct on our client's behalf. We would suggest that no action or at worse a reprimand be the maximum remedy employed if the Commission disagrees with our legal analysis of the applicability of the act in this situation.

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If we may be of further information or service, please do no hesitate to call. We would appreciate that all further correspondence be either directed to this office or courtesy copied to this office.

Yours truly,

Ward D. Jones

WARD D. JONES
Attorney for Pearl Country Club and
Honda Kaihatsu Kogyo Co., Ltd.

WDJ:lmc
Enclosure

cc: Albert S. Ogata

9404357299 3

STATEMENT OF DESIGNATION OF COUNSEL

NUR 2892

NAME OF COUNSEL: Ward D. Jones, Esq.

ADDRESS: #1814 Hawaii Building
745 Fort Street
Honolulu, HI 96813

TELEPHONE: (808) 533-3614

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

June 16/89
Date

Signature MASAYOSHI YASHIMA

RESPONDENT'S NAME: Honda Kaihatsu Kogyo Co., Ltd.
dba Pearl Country Club

ADDRESS: 98-535 Kaonohi Street
Aiea, HI 96701

HOME PHONE:

BUSINESS PHONE: (808) 487-1888/2460

9404357299 9·4

OGC 6659

CARLSMITH, WICHMAN, CASE, MUKAI AND ICHIKI
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING LAW CORPORATIONS
1001 BISHOP STREET
PACIFIC TOWER, SUITE 2200
HONOLULU, HAWAII 96813
CABLE ADDRESS: CWCMI
TELEX 723-8770 CWCMI HR
TELECOPIER (808) 523-0842

HONOLULU OFFICE:
P. O. BOX 656
HONOLULU, HAWAII 96809
(808) 523-2500

GUAM OFFICE:
P. O. BOX 8F
AGANA, GUAM 96910
(671) 472-6813
TELEX 721-6445 CWCMI GH

LOS ANGELES OFFICE
P. O. BOX 71169
LOS ANGELES, CALIFORNIA 90071-0169
(213) 955-1200

DIRECT DIAL NUMBER:
(808) 523-2647

HILO OFFICE
P. O. BOX 686
HILO, HAWAII 96721-0686
(808) 935-6644

KONA OFFICE
P. O. BOX 1720
KAILUA KONA, HAWAII 96745-1720
(808) 329-6464

MAUI OFFICE
P. O. BOX 1086
WAILUKU, HAWAII 96793
(808) 242-4535

SAIPAN OFFICE
P. O. BOX 241 CHRB
SAIPAN, MP 96950
(670) 322-3455
TELEX 783-658 CWCMI SPN

June 14, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Lee Ann Elliot
Chairman
Federal Election Commission
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 20 AM 10: 58

RE: **MUR 2892 - Kumagai Properties, Inc.**

Dear Ms. Elliot:

We write to inform you of our client's willingness to seek pre-probable cause conciliation of this matter under 11 C.F.R. § 111.18(d). Answers to the interrogatories you requested on May 21, 1990 are attached to this letter. Those interrogatories were received on May 30, 1990, making our response due today.

As the "Factual and Legal Analysis" also attached to this letter will show, our client has not violated any state or federal laws. The analysis will show that 1) Kumagai Properties, Inc. ("KPI") is not a foreign national under the definition of the statute, and thus did not violate 2 U.S.C. § 441e; 2) even if KPI were a foreign entity, under Hawaii law, foreigners may contribute to state and local election; and 3) in any case, it's unconstitutional for 2 U.S.C. § 441e to apply to state and local elections.

Even though KPI is confident that it has not violated any law, KPI will voluntarily desist from any further contributions to state and local elections. This decision is in no way an

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admission of any guilt, but is based solely on pragmatic considerations. KPI has only contributed a total of $2,000 to state and local elections, and the costs of responding to these complaints far exceeds the benefits of these small donations. KPI's new policy simply makes non-existent what had never been a significant practice.

We hope KPI's voluntary decision will be enough to remedy this situation. While KPI is willing to discontinue these contributions, we must stress that KPI will take whatever legal steps necessary to uphold its reputation as a law-abiding corporation.

Sincerely,

Thomas R. Sylvester

TRS:cme
Enclosures

9404357299 6

X9020897

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2892
	)	

RESPONSE OF KUMAGAI PROPERTIES, INC. TO
INTERROGATORIES FROM THE FEDERAL ELECTION COMMISSION

9404357299 7

Of Counsel:

CARLSMITH, WICHMAN, CASE,
MUKAI AND ICHIKI

LAWRENCE S. OKINAGA
STANLEY D. SUYAT
THOMAS R. SYLVESTER
Suite 2200, Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Tel. No. (808) 523-2500

Attorneys for Kumagai
Properties, Inc.

I9019178

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of) MUR 2892)

RESPONSE OF KUMAGAI PROPERTIES, INC. TO
INTERROGATORIES FROM THE FEDERAL ELECTION COMMISSION

1. State your name, local address, business, and where you are incorporated.

A. Kumagai Properties, Inc., 1585 Kapiolani Boulevard, Suite 1404, Honolulu, Hawaii 96814. Kumagai Properties, Inc. is engaged in the business of real estate development and is a Hawaii corporation.

2. Identify all officers and directors.

A. 1. The directors of the corporation and their residence addresses are:

Katsuya Kakurai
The Cosmopolitan
145 East 48th Street
New York, NY 10017

Koji Takehisa
1251 Heulu Street,
PH#7
Honolulu, HI 96822

Takayuki Furuta
1040 Lunalilo Street
Honolulu, HI 96816

Akira Kato
1600 Ala Moana Blvd.
#700
Honolulu, HI 96815

Shunsuke Nakane
1214 Pueo Street
Honolulu, HI 96816

Junzo Ishii
3-6-9 Nishi Nippori
Arakawa-ku, Tokyo
Japan 116

Kazuo Takizawa
31-15-502 Honcho, Wako City
Saitama Prefecture, Japan 351-01

9404357299 8

X9019178

2. The officers of the corporation and their residence addresses are:

President	Takayuki Furuta Address same as above
Vice Presidents	Shunsuke Nakane Koji Takehisa Junzo Ishii Kazuo Takizawa Addresses same as above
Executive Vice President	Akira Kato Address same as above
Secretary	Shunsuke Nakane Address same as above
Treasurer	Asaka Ishiyama 3138 Waialae Avenue #423 Honolulu, HI 96816

3. Identify all management personnel.

A. Management personnel are as follows:

Takayuki Furuta
Akira Kato
Shunsuke Nakane
Koji Takehisa
Junzo Ishii

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

A. Kumagai Properties, Inc. is a wholly-owned subsidiary of Kumagai International USA Corporation, a Texas corporation.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund.

9404357299 9

State whether you are required to file reports with any state election board.

A. The following contributions were made to state and local elections:

8-16-84	$1,000	Democratic Party of Hawaii
3-9-87	$ 500	Campaign of Governor John Waihee
5-04-88	$ 500	Friends of Rosalyn Baker

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

A. The individual who participated in the making of the contributions is Mr. Takayuki Furuta.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

A. The funds used to make the contributions were drawn from Kumagai Properties, Inc.'s general account. That account contains funds from three sources: income earned in Hawaii by Kumagai Properties, Inc. in the form of interest earned on loans to various development projects, and loans and capital contributions from Kumagai Properties, Inc.'s parent, Kumagai International USA Corporation, a Texas corporation. Bookkeeping records maintained by Kumagai Properties, Inc. do not differentiate between these three sources regarding the precise source of the funds used to make the contributions.

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8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

A. Kumagai Properties, Inc. does not maintain a political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstance funds are available for the pool.

A. Kumagai Properties, Inc. does not maintain a pool of funds specified for election activity.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

A. The person answering these questions is Mr. Koji Takehisa. He has been associated with Kumagai Properties, Inc. for three years as a Director and Vice President. Mr. Takehisa is a Japanese national and his residence address is 1251 Heulu Street, Penthouse 7, Honolulu, Hawaii 96822.

Kumagai Properties, Inc. is not required to file election reports with any government agency.

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VERIFICATION

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

KOJI TAKEHISA, being duly sworn, states that he files this response to interrogatories as a Vice President for Kumagai Properties, Inc., and that in such capacity he is qualified and authorized to verify the information included therein; that he has carefully examined all the statements and matters contained in the response to interrogatories; and that such statements made and matters set forth therein are true and correct to the best of his knowledge, information and belief.

KOJI TAKEHISA

Subscribed and sworn to before me
this 13th day of June,
1990.

Joann N. Sato
Notary Public
State of Hawaii

My commission expires 8/03/1990

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

KUMAGAI PROPERTIES, INC.'S FACTUAL AND LEGAL ANALYSIS

9404357300 3

Of Counsel:

CARLSMITH, WICHMAN, CASE,
MUKAI AND ICHIKI

LAWRENCE S. OKINAGA
STANLEY D. SUYAT
THOMAS R. SYLVESTER
Suite 2200, Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Tel. No. (808) 523-2500

Attorneys for Kumagai
Properties, Inc.

X9019178

FACTUAL AND LEGAL ANALYSIS

RE: MUR 2892
Kumagai Properties, Inc.

I. FACTUAL BACKGROUND

Kumagai Properties, Inc. ("KPI") is a Hawaii Corporation engaged in the business of real estate development. KPI is a wholly owned subsidiary of Kumagai International USA Corporation, a Texas corporation.

On August 16, 1984, KPI contributed $1000 to the Democratic Party of Hawaii. On March 9, 1987 KPI contributed $500 to the Campaign of Governor John Waihee. (Mr. Waihee was not governor at the time). On May 4, 1988, KPI contributed $500 to a Friends of Rosalyn Baker, an election campaign organization. KPI has made no other contributions to political campaigns. Mr. Takayuki Furuta, president of KPI and a resident alien, participated in the making of the contributions.

KPI's contributions came from funds derived locally from interest payments on loans made to various development projects and from capital contributions and loans from its parent corporation, Kumagai International USA Corporation. KPI does

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not maintain a pool of funds for election activity nor does it maintain a political action committee.

On April 11, 1989 and May 30, 1989, the Office of General Counsel of the Federal Election Commission ("Commission") received complaints alleging that KPI and others violated certain sections of the Federal Election Campaign Act of 1971 ("the Act"), 2 U.S.C.A. §§ 431-456 (West 1987 & Supp. 1990). Specifically, the complaints alleged that KPI had violated 2 U.S.C.A. § 441e by contributing to the election campaigns of candidates for state and local office in Hawaii. After merging and reviewing the complaints, the commission found reason to believe KPI had violated 2 U.S.C.A. § 441e and notified KPI of its findings on May 30, 1990. Under the Act, KPI is permitted to demonstrate within 15 days of receipt of notice that no action should be taken against it.

II. LEGAL ISSUES

KPI has not violated any law. First, under Hawaii law, foreigners are permitted to contribute to state and local election campaigns. Second, 2 U.S.C.A. § 441e does not apply to KPI. Third, if 2 U.S.C.A. § 441e does apply to state and local elections, it is unconstitutional and void.

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A. Contributions to State and Local Campaigns are Permitted by Hawaii Law

Under Hawaii law, people and corporations may make political contributions, Haw. Rev. Stat. §§ 11-101(18), 11-204 (1985) and no restrictions are placed upon foreigners. Thus, campaign contributions by foreigners are allowed. For support, we look to Haw. Rev. Stat. § 11-204, which places monetary restrictions on campaign contributions. This statute has been amended many times, and the legislature has considered adding a restriction on contributions by foreigners, but they haven't done so. Thus, the legislature, by its silence on this issue, implicitly allows contributions by foreigners.

A possible argument against the above analysis is that the federal statute (2 U.S.C.A. § 441e) already prohibits foreign contributions, so the state legislature may have felt that a state prohibition would be redundant and unnecessary. But this is not true at all, as shown by a senate bill which proposed to prohibit foreign contributions:

> While the [foreign] contributions prohibited under this [proposed] section are the same as those which the federal government contends are illegal in state or local elections under its laws and regulations, this bill is not intended to demonstrate any acquiescence to that contention. On the contrary, the legislature does not recognize federal jurisdiction in this area, and is therefore free to create an independent Hawaii campaign contribution law.

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S. Stand. Comm. Rep. No. 1300, 15th Leg., Reg. Sess., 1989 Hawaii Senate J. 1287 (emphasis supplied).

Furthermore, at the time of the alleged violations, the Hawaii Campaign Spending Commission had consistently approved of contributions by foreigners.[1] Therefore, the Hawaii state government had explicitly approved of contributions by foreigners.

B. 2 U.S.C.A. § 441e Does Not Apply to KPI

Title 2, § 441e of the United States Code provides in part:

> It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with an election to any political office or in connection with any primary election, convention or caucus. . . .

2 U.S.C.A. § 441e(a) (West 1987 & Supp. 1990). There are several reasons why 22 U.S.C. § 441e does not apply to KPI. First, KPI is not a "foreign principal" as defined by 22 U.S.C. § 611(b) and therefore not a "foreign national" as defined by 2 U.S.C. § 441e(b)(1). KPI is not a foreign principal because, as a Hawaii corporation, it is not "a partnership, association,

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[1]The state campaign spending commission director, Jack M.K. Gonzales has regularly advised candidates and contributors here in Hawaii that donations by foreigners were permissible under state law. The Honolulu Advertiser, Jan 28, 1989, at A1, col. 5.

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corporation, organization or combination of persons organized under the laws of or having its principle place of business in a foreign country." 22 U.S.C. § 611(b)(3). Further, KPI "is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States" and therefore, if considered a "person outside the United States," falls under the statute's exception. 22 U.S.C. § 611(b)(2). Further, KPI's parent corporation, Kumagai International USA Corporation, is organized under the laws of the State of Texas and would also not meet the definitions of "foreign principal."

Second, KPI did not act as a conduit for the contributions of foreign nationals to election campaigns and, therefore, did not violate the provisions of 2 U.S.C.A. § 441e which prevent persons from contributing to election campaigns indirectly. KPI's two small contributions came from funds derived locally from interest on loans and from capital contributions and loans from its Texas parent corporation, Kumagai International USA Corporation.

Third, the person who participated in making the contributions, Mr. Takayuki Furuta, as a resident alien is specifically excluded from the definition of "foreign national" under 2 U.S.C.A. § 441e. Accordingly, Mr. Furuta's involvement does not make KPI's contributions illegal.

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C. If 2 U.S.C.A. 441e Applies to State and Local Elections, it is Unconstitutional and Void

If 22 U.S.C. 441e is found to apply to KPI and to state and local elections generally, it is unconstitutional as an impermissible exercise of federal power in an area reserved to the states under the Tenth Amendment. The Tenth Amendment to the United States Constitution provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. Amend. X. The federal courts have defined the power to regulate state and local elections reserved by the Tenth Amendment by delimiting permissible state action and impermissible federal action. The Tenth Amendment has been explicitly recognized to reserve to the States the power to regulate state and local elections. See Sununu v. Stark, 383 F. Supp. 1287 (D.N.H. 1974), aff'd, 420 U.S. 958 (1975) (states have power, reserved by Tenth Amendment, to regulate candidate qualifications for state and local office); Vargas v. Calabrese, 634 F. Supp. 910 (D.N.J. 1986) (under Tenth Amendment states can prevent election fraud). Where the exercise of state power over state and local elections was found to be illegitimate, the state action violated personal liberties protected by the United States Constitution. See McKinney v. Kaminskey, 340 F. Supp. 289

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(M.D. Ala. 1972) (durational residency requirement for candidate for local office violates Fourteenth Amendment); Pestrak v. Ohio Elections Commission, 670 F. Supp. 1368 (S.D. Ohio 1987), modified, 677 F. Supp. 534 (S.D. Ohio 1988) (state prohibition on false statements in state campaigns is unconstitutional prior restraint on speech protected by First Amendment). The courts have recognized that the States have the power to regulate state and local elections to the extent that they do not infringe personal liberties protected by the Constitution.

In addition to delimiting permissible state action under the Tenth Amendment, federal courts have defined impermissible federal action affecting state and local elections. In Oregon v. Mitchell, 400 U.S. 112, 118 (1970), five Justices agreed that a 1970 voting rights statute that provided that the voting age in both federal and state elections would be lowered to 18 was unconstitutional as applied to the States. Id. at 118. Justice Black, in announcing the judgment of the court, relied in part on the Tenth Amendment to rule that the power to regulate state and local elections was reserved to the States. Id. at 124-125. Clearly, the Supreme Court has determined that the States have the power to regulate state and local elections and that the federal government is not permitted to intrude onto this power.

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III. CONCLUSION

KPI has not violated any law. Under Hawaii law contributions by foreigners to state and local campaigns is expressly permitted. Moreover, the federal statute, 2 U.S.C.A. § 441e, does not apply to KPI because KPI is not a foreign national as defined by the statute, nor is it a conduit for the indirect contributions of foreign nationals. Finally, if 2 U.S.C.A. § 441e does apply to state and local elections, it is unconstitutional and void.

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GOODSILL ANDERSON QUINN & STIFEL

ATTORNEYS AT LAW

1600 BANCORP TOWER
130 MERCHANT STREET
HONOLULU, HAWAII 96813

MAIL ADDRESS: P.O. BOX 3196
HONOLULU, HAWAII 96801

FACSIMILE (808) 531-2628 TELEPHONE (808) 547-5600 TELEX 7439146 (HKID)

*KONA OFFICE
P. O. BOX 2609
KAILUA-KONA, HAWAII 96745
PHONE (808) 329-7311
FACSIMILE (808) 326-2384

16584/67847

June 15, 1990

CERTIFIED MAIL #P 670 105 736
RETURN RECEIPT REQUESTED

Mr. Michael Troy
Office of the General Counsel
FEDERAL ELECTION COMMISSION
Room 659
999 E Street, N.W.
Washington, D.C. 20463

90 JUN 20 PM 1:05

Re: MUR 2892 - Azabu Realty, Inc. and
MUR 2892 - Azabu U.S.A. Corporation

Dear Mr. Troy:

This will confirm that you telephoned me yesterday to inform me that the Federal Election Commission would not entertain our request to pursue pre-probable cause conciliation until Azabu Realty, Inc. and Azabu U.S.A. Corporation submits answers to the questions that were enclosed with the letters addressed to me dated May 21, 1990.

Please be advised that on April 2, 1990, Azabu Realty, Inc. was merged with and into Azabu U.S.A. Corporation (Azabu U.S.A. Corporation being the surviving corporation).

Inasmuch as the May 21, 1990 letter suggested that, if we were interested in pursuing pre-probable cause conciliation, we make that request in writing and, as stated in my letters of June 6, 1990, we interpreted this to mean that Azabu Realty's and Azabu U.S.A.'s obligations to provide answers to interrogatories had been suspended

90 JUN 20 PM 1:05

pending the outcome of the pre-probable cause conciliation process, we hereby respectfully request an extension of thirty-five (35) days from yesterday (the date you informed me that the answers needed to be submitted) in which to provide answers. While I have already instructed my client to proceed with answering the questions, we believe that thirty-five (35) days will be required.

Very truly yours,

Ray Iwamoto

Raymond S. Iwamoto

RSI:ek

cc: Ms. Avelene Yee (Via Fax)

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 21, 1990

Mr. Raymond S. Iwamoto
Goodsill, Anderson, Quinn & Stifel
1600 Bancorp Tower
130 Merchant Street
P.O. Box 3196
Honolulu, Hawaii 96801

RE: MUR 2892
Azabu Realty, Inc.
Azabu U.S.A. Corporation

Dear Mr. Iwamoto:

This is in response to your letter dated June 15, 1990, which we received on June 20, 1990, requesting an extension until July 19, 1990 to respond to the above-captioned matter. After considering the circumstances presented in your letter, I have granted part of the requested extension. Accordingly, your responses are due by the close of business on July 13, 1990.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Jonathan Bernstein
Assistant General Counsel

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BAYS
DEAVER
HIATT
KAWACHIKA
LEZAK
KODANI

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90 JUN 22 PM 12 29

Floor · Hawaii Tower
Amfac Center · 745 Fort Street
Honolulu, Hawaii 96813

P.O. Box 1760
Honolulu, Hawaii 96806

Telephone (808) 533-3888
Facsimile (808) 533-4184
(808) 537-1888
Telex RCA 7238176

A. Bernard Bays*
Phillip L. Deaver
Jerry M. Hiatt
James A. Kawachika
John F. Lezak*
Roy M. Kodani
Harvey I. Lung
Crystal K. Rose
Craig K. Shikuma
William C. Byrne
Carl H. Osaki
Jason N. Baba
Michael L. Lam
Alan K. Lau
Michael D. Roth
Joseph N. Kitsuse

June 19, 1990

Patty Reilly, Esq.
General Counsel's Office
Federal Election Commission
999 E. St. N.W.
Washington, D.C. 20463

Re: MUR 2892, Hawaii Sekitei Corporation

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

90 JUN 22 PM 3 21

Dear Ms. Reilly:

Enclosed please find a completed Statement of Designation of Counsel which will serve notice to you that this office will represent Hawaii Sekitei Corporation in the above matter.

Please contact us at your earliest convenience if the explanation contained in Mr. Sugiyama's letter of June 26, 1989 is not acceptable to you.

Very truly yours,

Michael L. Lam

Michael L. Lam

MLL:djn
enclosure

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 2892

NAME OF COUNSEL: A. Bernard Bays, Esq./
Michael L. Lam, Esq.

ADDRESS: Bays, Deaver, Hiatt, Kawachika,
Lezak & Kodani
Ninth Floor, Hawaii Tower
745 Fort Street
Honolulu, Hawaii 96813

TELEPHONE: (808) 533-3888

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

JUN. 15, '90
Date

Signature

RESPONDENT'S NAME: Hawaii Sekitei Corporation
dba Waikiki Joy Hotel

ADDRESS: 320 Lewers Street

Honolulu, Hawaii 96815

HOME PHONE:

BUSINESS PHONE: (808) 924-2411

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RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

90 JUN 18 PM 4:23

MUR 2892

FRIENDS OF JAMES AKI
84-339 Ikuone Place
Waianae, Hawaii 96792
Phone (808) 695-8645

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 19 AM 11:40

June 12, 1990

Lee Ann Elliott, Chairman
Federal Election Commission
Washington D.C. 20463

Dear Ms. Elliott,

This letter is in regards to the May 24, 1990 correspondence I received. I apologize for the delay, due partly to my being out of state.

Enclosed, is a copy of my letter dated April 28, 1989, which was sent to Mr. George F. Rishel. I believe that the letter explained my position on this matter. For your information I have returned the $250.00 contribution; also attached is a report of campaign receipts and expenditures.

I am hopeful that this matter will be resolved in the near future.

Sincerely,

James Aki

enc:

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Friends of James Aki
84-339 Ikuone Place
Waianae, Hawaii 96792
(808) 668-8645

April 28, 1989

George F. Rishel
Acting Associate General Counsel
Federal Election Commission
999 E Street N. W.
Washington, D.C. 20463

RE: MUR 2846
Campaign of Senator James Aki

Dear Mr. Rishel:

This is in response to your letter, dated April 17, 1989, which advises me that the Federal Election Commission has received a complaint alleging that my campaign may have been in violation of the Federal Election Campaign Act of 1971.

Upon reviewing the body of the complaint accompanying your letter, which appears to concern itself primarily with the campaign of Governor John Waihee, I note no specific references to either myself or my campaign. There is, however, mention of my having accepted a $250.00 contribution from the Royal Hawaiian Country Club in a newspaper article attached to the complaint as an exhibit. I am assuming in this response that the reference in the article constitutes the basis for the alleged violation referred to in your letter.

I request that no action be taken against myself or my campaign for the following reasons:

1. Until the question surfaced in the news media earlier this year, I was unaware that there was any impropriety in accepting contributions from foreign nationals in connection with a state or local election campaign. Hawaii law does not prohibit the acceptance of such contributions. It was my belief, and probably that of most of the politicians in this state, that the federal election law applied only to candidates for federal office. To my knowledge, the issue had not previously been raised in this state and, in any event, I cannot recall any advice from our state election authorities that would

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suggest that acceptance of such contributions was in any way improper. As the complaint itself points out, there is still widespread confusion as to the applicability of the federal law to state and local elections.

2. Although I acknowledge that my campaign received a $250.00 contribution from the Royal Hawaiian Country Club, my campaign was not aware that this contribution was in fact one from a foreign national. I believe my campaign workers assumed that the contribution was from a local company due to the name of the company and the fact that its check was drawn on a local bank. I have since been advised that the Royal Hawaiian Country Club is in fact registered in this state.

3. Lastly, although I am still uncertain as to the applicability of the federal election law to my campaign given the conflicting viewpoints on the issue, I am, and always have been, more than willing to comply with both the letter and spirit of the law. Thus, despite my uncertainty, to remove any hint of impropriety, I have returned the $250.00 contribution in full.

Should you have any further questions, please feel free to contact me.

Thank you for your attention to this matter.

Very truly yours,

Senator James Aki

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STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

ELECTION YEAR _____

REPORT OF CAMPAIGN RECEIPTS AND EXPENDITURES

This Report Covers The Period From 1/1/87 thru 6/30/87

SECTION A
NAME AND ADDRESS OF CANDIDATE'S COMMITTEE
(Must be same as appearing on organizational report)

NAME Friends of Wayne Chi
ADDRESS 84-329 Likuma Pl.
CITY STATE Waianae, HI. 96792
BUS 545-6299 RES 695-8665
Treasurer's Telephone

THIS REPORT IS A

- ☐ Pre Primary Report
- ☐ Pre General Report
- ☐ Post Primary Report
- ☐ Post General Report
- ☑ Supplemental Report
- ☐ Amended Report
- ☐ Final Termination Report (Balance Must be Reduced to Zero)
- ☐ Other _____

SECTION B
SUMMARY OF RECEIPTS AND EXPENDITURES
(Fill Out Sections C, D, E & F Before Section B)

RECEIPTS		EXPENDITURES	
1 Contributions of $100 or Less	4500.00	10 Expenditures (Line D Col. 3)	5732.3
2 Contributions Aggregating Over $100 (Line 19)	9175.00	11 Fundraising Expenditures (Line H Col. 3)	12930.5
3 Other Receipts (Line 20)		12 Total Expenditures This Period (Add Lines 10 and 11)	8663.+
4 Total Contributions This Period (Add Lines 1 thru 3)	13,675.00	13 Total Expenditures From Prior Report (Sec. B Line M of Prior Report)	17585.5
5 Total Contributions From Prior Report (Sec. B Line B of Prior Report)	17,115.00	14 Total Expenditures to Date (Add Lines 12 & 13)	26248.
6 Total Contributions to Date (Add Lines 4 & 5)	30,790.00		
7 Balance on Outstanding Loans (Line 21)			
8 Political Expenditures of Personal Funds (Line 22)	1,000.00	15 SURPLUS (If Line B Minus Line N is Positive)	4541.5
9 Total Receipts to Date (Add Lines 6 thru 8)	31,790.00	16 DEFICIT (If Line B Minus Line N is Negative)	
		CASH BALANCE As of 6/30/87	15684.91

SECTION C AGGREGATE CONTRIBUTIONS OVER $100

DATE RECEIVED	NAME AND ADDRESS OF DONOR	DESCRIPTION OF INCOME	AMOUNT OF THE CASH CONTRIBUTION	VALUE OF THE NON-MONETARY CONTRIBUTION	AGGREGATE TOTAL TO DATE
3/6/87	Castle & Cooke Inc. P.O. Box 2990 Hon. 96801		300.00		300.
3/20/87	Aio & Hi Pua P.O. Box 9449 Hon. 96801		200.00		200.
3/20/87	Friday Printing Co. P.O. Box 1135 Hon. 96806		100.00		100.
3/20/87	Daily Fry Shoppe 1001 Queen St. Suite 2102 96813		100.00		100.
3/20/87	Ralph Ohta 86-279 Lewili St. Waianae		100.00		100.
3/26/87	Merton Dan 1545 Hoaanaeel. Hon 96821		125.00		125.
3/23/87	C. Brewer & Co. Ltd. P.O. Box 1826 Hon. 96805		100.00		100.
3/20/87	Honokaa Sugar Co. P.O. Box 250 Paauilo HI 96776		200.00		200.

17 TOTAL AGGREGATE CONTRIBUTIONS OVER $100 THIS PAGE ..... 1225.
18 TOTAL AGGREGATE CONTRIBUTIONS OVER $100 FROM SUPPORTING SCHEDULE ..... 7,950.
19 TOTAL AGGREGATE CONTRIBUTIONS OVER $100 THIS PERIOD (Add Lines 17 & 18) ..... 9,175.

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SECTION D — **OTHER RECEIPTS** (Public Funding, Interest Received, Other)

DATE	SOURCE	ADDRESS	DESCRIPTION	AMOUNT

20 TOTAL OTHER RECEIPTS THIS PERIOD ..... $

SECTION E — **LOANS AND CANDIDATE'S POLITICAL EXPENDITURES OF PERSONAL FUNDS**

DATE	NAME AND ADDRESS OF LENDER OR CANDIDATE	BALANCE AT BEGINNING OF PERIOD	CHANGES DURING PERIOD	BALANCE (Loans)	BALANCE (Exp. of Pers. Funds)

21 CURRENT BALANCE OF LOAN ..... $

22 CURRENT BALANCE OF CANDIDATE'S POLITICAL EXPENDITURES OF PERSONAL FUNDS ..... $

SECTION F — **EXPENDITURES**

INVOICE DATE	VENDOR NAME AND ADDRESS	PURPOSE & DESCRIPTION	AMOUNT OF INVOICE PAID THIS PERIOD	AMOUNT OF UNPAID INVOICE*
3/12/87	Boys - Girls Club of Hon	Donation Holy Hill Club		62.50
4/3/87	Kats Sushi	Lunch Wrestling Team		64.47
4/29/87	Maili Elementary School	Donation Track Team		100.00
4/29/87	Leeward Wholesale meats	Donation Sylvania Club-Warren		45.66
4/29/87	Lehua Fernandez Sellings	Wreaths + Lumber		41.97

*If this is an unpaid invoice from last period being paid this period, show the amount being paid and same amount as a negative number this column

	(+) COLUMN 1 TOTAL THIS PAGE	(+) COLUMN 2 TOTAL FROM SUPP. SCHEDULE	(=) COLUMN 3 TOTAL THIS PERIOD
23 EXPENDITURES	316.50	5417.83	5732.33
24 EXPENDITURES INCIDENTAL TO FUNDRAISERS		2930.82	2930.82

OAHU CANDIDATES - Submit original and 1 copy
NEIGHBOR ISLAND CANDIDATES - Submit original and 2 copies

Certification: I hereby certify that the above and all attached Schedules are complete, correct and true statements to the best of my knowledge.

Candidate's Signature — Date — Treasurer's Signature: Angelina Caprez — Date: 7/30/8

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

AGGREGATE CONTRIBUTIONS OVER $100

Friends of Jann Aki
84-339 Ka'ena Pl.
Waianae, HI. 96792

NAME OF CANDIDATE, COMMITTEE OR PARTY

DATE RECEIVED	NAME AND ADDRESS OF DONOR	OCCUPATION (IF A MINOR ENTER NAME OF PARENT)	(COLUMN 1) AMOUNT OF THIS CASH CONTRIBUTION	(COLUMN 2) VALUE OF THIS IN-KIND CONTRIBUTION DESCRIPTION	(COLUMN 3) AGGREGATE TOTAL $ FROM DONOR
3/20/87	Donald Henson 1860 Ala Moana Blvd #20 Hon. 96815		200.00		200.00
3/20/87	First Hawaiian Bank Spec. Acct.		250.00		250.00
3/20/87	Edward H. Kawamoto		100.00		100.00
3/25/87	Irene de Stronge 87-900 Waaguhl St. Waianae 96792		100.00		100.00
3/25/87	Hi. Dental PAC 3181 N. Nimitz Hwy Rm 212		400.00		400.00
3/25/87	Dupac-Hawaii #1 516-E Kawaihae St. Hon.		150.00		150.00
3/27/87	M. Dick Yoda S/A 2411 S. King St. Hon. 96826		100.00		100.00
3/27/87	Pacific Resources Inc PAC P.O. Box 2379 Hon. 96804		100.00		100.00
3/27/87	Thermal Power Co. 220 S. King St 1750 Hon 96813		200.00		200.00
3/30/87	Service Pacific PAC P.O. Box 2788 Hon. 96803		100.00		100.00
3/30/87	Vi PAC 2255 Kuhio Ave #1001 Hon. 96815		100.00		100.00
			TOTAL COLUMN 1	TOTAL COLUMN 2	NOTE: IN-KIND CONTRIBUTIONS ARE ALSO EXPENDITURES WHEN USED

1 SUBTOTAL of Contributions Over $100 This Page 1,800.00

2 TOTAL This Period (last page this line only) .....

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STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

AGGREGATE CONTRIBUTIONS OVER $100

Friends of Jerry Ahu
[illegible] Kuhio Pl
Honolulu Hi. 96790

NAME OF CANDIDATE, COMMITTEE OR PARTY

Page 2 of 4

DATE RECEIVED	NAME AND ADDRESS OF DONOR	OCCUPATION (IF A MINOR ENTER NAME OF PARENT)	(COLUMN 1) AMOUNT OF THIS CASH CONTRIBUTION	(COLUMN 2) VALUE OF THIS IN-KIND CONTRIBUTION DESCRIPTION	(COLUMN 3) AGGREGATE TOTALS FROM DONOR
3/30/87	Royal Hawaiian Country Club 581 Kamoku St Ste. 2404 Hon. 96826		250.00		250.00
4/1/87	M&C People Inc. Ste 500 Pauahi Tower 1001 Bishop St. Hon. 96813		100.00		100.00
4/1/87	Grumeville Emp PAC P.O. Box 30100 Honolulu, Hi. 96722		250.00		250.00
4/3/87	Hi. Consumer Finance 1106 Kuwili Mall PAC Hon. 96813		250.00		250.00
4/3/87	AMFAC PA Box 0280 Hon 96801		250.00		250.00
4/3/87	Hawaiian Telephone PAC PO Box 2200 Hon 96841		150.00		150.00
4/4/87	HSFFA PAC 2305 S. Beretania Hon 96826		100.00		100.00
4/4/87	Clean Government 1432 Middle St. Hon. 96819		100.00		100.00
4/4/87	American Hi. Cruises 604 Fort St. Mall Hon. 96813		250.00		250.00
4/4/87	SEIU Hawaii PAC 451 Atkinson Dr. Hon 96814		100.00		100.00
4/4/87	TSA International Ltd. 1585 Kap. Blvd. Hon 96814		100.00		100.00
			TOTAL COLUMN 1.	TOTAL COLUMN 2.	NOTE: IN-KIND CONTRIBUTIONS ARE ALSO EXPENDITURES WHEN USED

1 SUBTOTAL of Contributions Over $100 This Page 1,900.00

2 TOTAL This Period (last page this line only) .....

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STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

Francis P. Jamie Gt AGGREGATE CONTRIBUTIONS OVER $100
80339 Ike me Pl.
Waianae H. 96792

NAME OF CANDIDATE, COMMITTEE OR PARTY

DATE RECEIVED	NAME AND ADDRESS OF DONOR	OCCUPATION (IF A MINOR ENTER NAME OF PARENT)	(COLUMN 1) AMOUNT OF THIS CASH CONTRIBUTION	(COLUMN 2) VALUE OF THIS IN KIND CONTRIBUTION DESCRIPTION	(COLUMN 3) AGGREGATE TOTAL FROM DONOR
4/6/87	SPEC Dorothy Ching P.O. Box 2400 Hon.		200.00		200.00
4/6/87	Matsuo Takabuki 850 Richards st. suite 500 Hon 96813		100.00		100.00
4/14/87	Thomas Kanahele P.O. Box 2132 Waianae 96813		100.00		100.00
4/16/87	Hawaii Mutual Dev Corp 1150 King St. Ste 203 Hon. 96814		100.00		100.00
4/21/87	Kelvin L. Kai P.O. Box 636 Honolulu, H 96716		100.00		100.00
4/21/87	Fred C. Trotter 950 Fort St Mall Suite 1900 Hon 96813		100.00		100.00
4/29/87	Harwood D. Williamson 1602 Kalanui circle Hon 96821		100.00		100.00
4/29/87	CEG 950 Richards st. Ste 400 Hon 96813		100.00		100.00
5/15/87	Paul R. Cassidy 950 Fort St. Ste 1850 Honolulu 96813		100.00		100.00
5/15/87	P.W. Minn 3223 Manoa Ave Hon. 96815		100.00		100.00
5/15/87	HAPA-PAC 1188 Bishop st. Ste 2706 Hon. 96813		200.00		200.00
			TOTAL COLUMN 1	TOTAL COLUMN 2	NOTE: IN-KIND CONTRIBUTIONS ARE ALSO EXPENDITURES WHEN USED

1 SUBTOTAL of Contributions Over $100 This Page → $1,300.00

2 TOTAL This Period (last page this line only)

9404357302 4

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION
AGGREGATE CONTRIBUTIONS OVER $100

Friends of James Aki
839 Okiemoe Pl
Waialae Hi 96792
NAME OF CANDIDATE, COMMITTEE OR PARTY

DATE RECEIVED	NAME AND ADDRESS OF DONOR	OCCUPATION OF A MINOR ENTER NAME OF PARENT	COLUMN 1 AMOUNT OF THIS CASH CONTRIBUTION	COLUMN 2 VALUE OF THIS IN-KIND CONTRIBUTION DESCRIPTION	COLUMN 3 AGGREGATE TOTAL FROM DONOR
6/4/87	HGEA P.O. Box 2980 Hon. 96802		200.00		200.00
6/4/87	West Beach Estate 1585 Kapiolani Blvd Suite 1100 Hon 96814		200.00		200.00
6/4/87	West Beach Estates 1585 Kapiolani Blvd Suite 1100 Hon 96814		1800.00		1800.00
6/4/87	Wendell Kwong P.O. Tobacco Institute 1875-1 St. North West Washington D.C. 20006		100.00		100.00
6/4/87	Leo A Daly Planning Architecture Engineering		100.00		100.00
6/4/87	Community Planning Inc 700 Bishop St. Suite 1008 Hon 96813		250.00		250.00
6/4/87	Phillips Brandt Reddick 130 Merchant St Ste 1111 Hon 96813		150.00		150.00
6/4/87	Gary T. & Doris T. Okamoto 6311 Alani Dr Hon. 96822		150.00		150.00
			TOTAL COLUMN 1	TOTAL COLUMN 2	NOTE: IN-KIND CONTRIBUTIONS ARE ALSO EXPENDITURES WHEN USED

1 SUBTOTAL of Contributions Over $100 This Page 2950.00
2 TOTAL This Period (last page this line only) .....

9404357302 5

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

EXPENDITURES

Friends of Jim Aki Fundraiser
84-339 Lihue PL March 27, 1987
Waianae, HI
NAME OF CANDIDATE, COMMITTEE OR PARTY

Page 1 of 1

INVOICE DATE	VENDOR NAME AND ADDRESS	PURPOSE & DESCRIPTION	AMOUNT OF INVOICE THIS PERIOD	AMOUNT OF UNPAID INVOICE
3/25/87	China House Restaurant Alamoana Shopping Center	Rental + Food		1,377.1
4/2/87	Ross Nishioka	Reimbursement of cash advance for food [illegible] Restaurant		607.1
4/2/87	Fisher Printing	Stationery - Envelop Printing		946.0

1 Total Amount of Invoices Paid This Page 2930.82

2 Total Amount of Invoices Received but Unpaid This Page ..... ____

3 SUBTOTAL of Expenditures This Page (lines 1 & 2) ..... ____

3a Total from Report of Expenditures of Public Funds (if applicable, last page this line only) ..... ____

4 TOTAL This Period (last page this line only) Fundraiser 2930.8

*If this is an unpaid invoice from last period being paid this period, show the amount being paid and same amount as a negative number this column

9404357302 6

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

EXPENDITURES

Friends of Jerry Aki
84339 Kuone St.
Waianae, HI 96792

NAME OF CANDIDATE, COMMITTEE OR PARTY

INVOICE DATE	VENDOR NAME AND ADDRESS	PURPOSE & DESCRIPTION	AMOUNT OF INVOICE PAID THIS PERIOD	AMOUNT UNPAID INVOICE
1/28/87	Waianae High School Aloha Club	Donation Retirement Gift		200
1/28/87	Lehua Fernandez Sallings State Capitol	Garden Sale Newspaper Ad.		99.
1/31/87	George's Decor Studio	Opening Day Pictures		40.00
2/10/87	Easter Seal Telethon	Donation		25.
2/18/87	Leandro Lungaing Jr. Kaukamana St. Maili	Pictures, Taking Films, Developing		30.
2/17/87	Miles Bake Shop NANAKuli	Donation Hale Ola		20.
3/9/87	Winnie Tanaka	Dolly Ching Promotion		20.
3/9/87	Miss Hawaiian American Co-ed. Pageant Michelle Valdez	Donation		50
3/10/87	Lehua Fernandez Sallings	Benito Lindsey Kauai Students		18

1 Total Amount of Invoices Paid This Page 328.94

2 Total Amount of Invoices Received but Unpaid This Page ..... ____

3 SUBTOTAL of Expenditures This Page (lines 1 & 2) ..... ____

3a Total from Report of Expenditures of Public Funds (if applicable, last page this line only) ..... ____

4 TOTAL This Period (last page this line only) 328

*If this is an unpaid invoice from last period being paid this period, show the amount being paid and same amount as a negative number this column

9404357302 7

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

EXPENDITURES

Friends of Gene Cabi
88-337 Ikuepa Pl.
Waianae, Hi. 96792

NAME OF CANDIDATE, COMMITTEE OR PARTY

PAGE 2 OF 4

INVOICE DATE	VENDOR NAME AND ADDRESS	PURPOSE & DESCRIPTION	AMOUNT OF INVOICE PAID THIS PERIOD	AMOUNT OF UNPAID INVOICE*
5/1/87	Ross Nishioka	Reimbursement for misc Exp		1,023.
5/1/87	Mabel DeCambra	Donation		50.
5/1/87	Jokepa Indus. Relations	Senate Blazer Cod-Seal		160.0
5/4/87	Maile Bus Service	Donation Waianae High School Bishop Museum		98.6
5/6/87	Waianae Coast Day Care Center	Golf Tournament Benefit		65.0
5/6/87	Namahuli Horseshoe Club	Donation Tournament		100.
5/8/87	Mrs. Faye Aki	Reimbursement personal Loan		2000.0
5/27/87	Edna Patele	Donation Trophy		30.2
5/28/87	Sams Sign	Banner Waianae/Nanakuli Banner		104.0

1 Total Amount of Invoices Paid This Page 3631.26

2 Total Amount of Invoices Received but Unpaid This Page .....

3 SUBTOTAL of Expenditures This Page (lines 1 & 2) .....

3a Total from Report of Expenditures of Public Funds (if applicable, last page this line only) .....

4 TOTAL This Period (last page this line only) 3631.2

*If this is an unpaid invoice from last period being paid this period, show the amount being paid and same amount as a negative number this column.

9 4 0 4 3 5 7 3 0 2 8

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

EXPENDITURES

Page 3 of 4

Tokunaga for Senate 1987 Eleanor M. Tokunaga
NAME OF CANDIDATE, COMMITTEE OR PARTY

INVOICE DATE	VENDOR NAME AND ADDRESS	PURPOSE & DESCRIPTION	AMOUNT OF INVOICE PAID THIS PERIOD	AMOUNT OF UNPAID INVOICE*
5/28/87	Consolidated Warehouse	paper products Grand Rite		103.41
5/28/87	Gaspro -	Helium - Balloons		69.7
5/28/87	Kernel Pops	Nacho Chips Donation		39.5
5/29/87	Holiday Mart Dance	Door Prizes Donation		167.3
5/29/87	Flags + Things	Grand Rite Donation		26.5
5/29/87	Miles Bake Shop	30 cake lady Donation Grand Rite		69.25
5/29/87	Tamura Imperatte	Dinner for Seniors		558.5
5/30/87	Tamura Imperatte	Beverage for workers		41.7
5/31/87	Leeward Print - Screen	Tee Shirts		287.0

1 Total Amount of Invoices Paid This Page 1362.63

2 Total Amount of Invoices Received but Unpaid This Page .....

3 SUBTOTAL of Expenditures This Page (lines 1 & 2) .....

3a. Total from Report of Expenditures of Public Funds (if applicable, last page this line only) .....

4 TOTAL This Period (last page this line only) 1362.63

*If this is an unpaid invoice from last period being paid this period, show the amount being paid and same amount as a negative number this column.

9404357302 9

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

EXPENDITURES

Fernando Tamu Cafe
84-339 Makua Rd.
Waianae, H. 96792

NAME OF CANDIDATE, COMMITTEE OR PARTY

INVOICE DATE	VENDOR NAME AND ADDRESS	PURPOSE & DESCRIPTION	AMOUNT OF INVOICE PAID THIS PERIOD	AMOUNT OF UNPAID INVOICE*
4/2/87	De Local Boys	Music - Dance for High School		100.00

1 Total Amount of Invoices Paid This Page 100.00

2 Total Amount of Invoices Received but Unpaid This Page ..... _____

3 SUBTOTAL of Expenditures This Page (lines 1 & 2) ..... _____

3a Total from Report of Expenditures of Public Funds (if applicable, last page this line only) ..... _____

4 TOTAL This Period (last page this line only) 100.00

*If this is an unpaid invoice from last period being paid this period, show the amount being paid and same amount as a negative number this column.

9404357303 0

EGC 6690

FOLEY MAEHARA JUDGE NIP & CHANG

ATTORNEYS AT LAW
2700 GROSVENOR CENTER
737 BISHOP STREET
HONOLULU, HAWAII 96813

TELEPHONE (808) 526-3011
FAX (808) 523-1171

EDWARD R. BROOKS
WESLEY Y. S. CHANG
THOMAS M. FOLEY
JAMES R. JUDGE

ERIC T. MAEHARA
RENTON L. K. NIP
CARL TOM

PAULA W. CHONG
MIMI K. HORIUCHI
ELIZABETH A. IVEY
LENORE HU LEE

STELLA M. LEE
PETER J. LENHART
LEANNE A. N. NIRAIDO
CORI CHING WESTON

MAUI OFFICE
P. O. BOX 1268
WAILUKU, MAUI, HAWAII 96793

TELEPHONE (808) 242-4955
FAX (808) 242-4368

OF COUNSEL
GEORGE T. ORAMURA

RECEIVED
FEDERAL ELECTION C
MAIL ROOM

90 JUN 22 AM

June 15, 1990

Patty Reilly, Esq.
Federal Election Commission
Washington, D.C. 20463

Re: MURs 2846 and 2892 Citizens for Waihee

Dear Ms. Reilly:

I am counsel for the Citizens for Waihee. On June 14, 1990, the Citizens for Waihee received a letter signed by Lee Ann Elliott, Chairman, Federal Election Commission (FEC), dated May 21, 1990. Such letter was addressed to 800 South Beretania, Suite 24A, Honolulu, Hawaii 96801. As such address is not the current address for the Citizens for Waihee, we can only assume that the delay in delivery and receipt until June 14, 1990 was due to the incorrect address.

We are reviewing the attachments to such letter and have begun to respond to the Interrogatories and Request for Production of Documents. As I will be away from the state during the week of June 18, 1990, we respectfully request that we be provided with an extension of 20 days for a total of 35 days from our receipt of your letter on June 14, 1990.

Subsequent to the 1989 complaint by Mr. Loccrichio, and while not in agreement as to the applicability of 2 U.S.C. §441e, the Campaign adopted a policy of refunding contributions from such persons and entities which the Campaign was able to identify as having come from a foreign national. As it will take some time to go through the records of the campaign to identify with accuracy all of such refunds, the extension requested is necessary and appropriate.

We thank you in advance for your cooperation and consideration with respect to our request for an extension. Please feel free to call me with respect to this matter.

Sincerely,

Renton L. K. Nip

Renton L. K. Nip

90 JUN 22 AM 10:22
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
RECEIVED

24043573031

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

June 27, 1990

Mr. Renton L. K. Nip
Foley, Maehara, Judge,
Nip, & Chang
2700 Grosvenor Center
737 Bishop Street
Honolulu, Hawaii 96813

RE: MUR 2892
Citizens for Waihee

Dear Mr. Nip:

This is in response to your letter dated June 15, 1990, which we received on June 22, 1990, requesting an extension of twenty days to respond to the above-captioned matter. After considering the circumstances presented in your letter, I have granted part of the requested extension. Accordingly, your response is due by the close of business on July 13, 1990.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Jonathan Bernstein
Assistant General Counsel

9404357302

OGC 6740

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90 JUN 25 AM 10:31

KEMPER & WATTS
ATTORNEYS AT LAW, A LAW CORPORATION

EDWARD C. KEMPER
THOMAS T. WATTS

1200 PIONEER PLAZA
900 FORT STREET MALL
HONOLULU, HAWAII 96813-3771
TELEPHONE: (808) 524-0330
TELECOPIER: (808) 523-1406

June 18, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

90 JUN 26 PM 3:23

Federal Election Commission
999 "E" Street Northwest
Washington, D.C. 20563

Attention: Ms. Patricia Reilly

Re: MUR 2846 and MUR 2892, Masanori Kobayashi

Dear Ms. Reilly:

By letter dated April 17th, 1989, Masanori Kobayashi received notice from the Federal Election Commission of a complaint which was assigned number MUR 2846. In a letter dated June 6th, 1989, he received a second letter from the Federal Election Commission advising him of the same complaint which was assigned number MUR 2892. On June 7th, I wrote to you enclosing a copy of the statement of designation of counsel form which designated me as Mr. Kobayashi's lawyer. A copy of that letter is enclosed. We did not prepare a response to the complaint.

I am writing to find out the present status of the matter, since we have heard nothing since the receipt of the original letters.

Yours truly,

KEMPER & WATTS

Thomas T. Watts

Thomas T. Watts

TTW:srp
Enclosure

2404357303 3

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2846

NAME OF COUNSEL: THOMAS T. WATTS, ESQ.

ADDRESS: Kemper & Watts
900 Fort Street Mall, #1200
Honolulu, HI 96813

TELEPHONE: (808) 524-0330

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

May 3, 1989
Date

Signature

RESPONDENT'S NAME: MASANORI KOBAYASHI

ADDRESS: 1525 WILDER AVENUE #703
HONOLULU, HAWAII 96822

HOME PHONE: 946-6020

BUSINESS PHONE: 847-3981

9404357303 4

KEMPER & WATTS
ATTORNEYS AT LAW, A LAW CORPORATION

EDWARD C. KEMPER
THOMAS T. WATTS

1600 PIONEER PLAZA
900 FORT STREET MALL
HONOLULU, HAWAII 96813-3771
TELEPHONE: (808) 524-0320

June 7, 1989

Federal Election Commission
999 "E" Street, N.W.
Washington, D.C. 20563

Attention: Ms. Patty Reilly

Re: MUR 2846
Masanori Kobayashi

Dear Ms. Reilly:

I will be representing Mr. Masanori Kobayashi in connection with the matter which you have assigned MUR 2846. Enclosed you will find a signed original copy of the Statement of Designation of Counsel form. I have prepared a response to the Complaint and will be filing that response with you as soon as it has been approved by Mr. Kobayashi.

Yours truly,

KEMPER & WATTS

Thomas T. Watts

THOMAS T. WATTS (de)

TTW:de

Enclosure

cc: Mr. Masanori Kobayashi

2404357303 5

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

July 12, 1990

Mr. Thomas T. Watts
Kemper & Watts
1200 Pioneer Plaza
900 Fort Street Mall
Honolulu, Hawaii 96813-3771

Re: MUR 2892
Masanori Kobayashi

Dear Mr. Watts:

This is regarding your letter dated June 18, 1990, which we received on June 25, 1990.

On April 17, 1989, the Commission mailed the complaint in MUR 2846 to Mr. Kobayashi. On June 6, 1989 the Commission mailed the complaint in MUR 2892 to Mr. Kobayashi. The Commission had no record of your correspondence dated June 7, 1989 until it received your letter dated June 18, 1990.

The Commission decided to merge MUR 2846 into a single matter with MUR 2892. Masanori Kobayashi remains a respondent in MUR 2892.

The Commission at this time has made no finding of whether or not there is reason to believe your client violated the Federal Election Campaign Act of 1971 as amended ("the Act"). Having established that your client has been notified of the complaint in this matter, this Office will now make a recommendation to the Commission regarding whether or not there is reason to believe your client violated the Act.

If you have any information which you would like to submit, please send it to the Commission as soon as possible.

If you have any questions, please contact Michael J. Troy, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

2404357303 6

06C6713

OKUMURA TAKUSHI FUNAKI & WEE
ATTORNEYS AT LAW
A LAW CORPORATION

SUYEKI OKUMURA
ROY E. TAKUSHI
JAMES T. FUNAKI
JOSEPH K. WEE

SHUICHI MIYASAKI
ALFRED M. K. WONG
ROBERT M. EHRHORN, JR.
DICKSON C. H. LEE

PETER T. STONE
JAMES N. H. YEE
AARON S. H. YOO

SUITE 1400
GROSVENOR CENTER
733 BISHOP STREET
HONOLULU, HAWAII 96813

TELEPHONE (808) 543-9800
FACSIMILE (808) 599-1960

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUN 25 AM 10:31

June 20, 1990

Federal Election Commission
999 E Street NW
Washington, D. C. 20463

VIA FAX AND
REGULAR MAIL

Attention: Patty Reilly, Esq.

Re: MUR 2892
Matsuzato Hawaii, Inc.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 25 PM 1:27

Dear Ms. Reilly:

Pursuant the FEC's letter of June 13 granting an extension of the time to respond to the interrogatories in the above-referenced case to June 20, 1990, enclosed please find the Answers to Interrogatories for Matsuzato Hawaii, Inc.

A copy of this letter and the answers are being faxed to you; the originals are being mailed to you today.

Very truly yours,

OKUMURA TAKUSHI FUNAKI & WEE
ATTORNEYS AT LAW
A LAW CORPORATION

By Ellyn S. Nishi
for Dickson C. H. Lee

DCHL:en

Enclosure

cc: Matsuzato Hawaii, Inc.

5015V/16

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BEFORE THE FEDERAL ELECTION COMMISSION

In re Matsuzato Hawaii, Inc.) MUR 2892
)
)

ANSWERS TO INTERROGATORIES

Respondent Matsuzato Hawaii, Inc. ("Respondent") responds to the Interrogatories of the Federal Election Commission ("Commission") as follows:

1. State your name, local address, business, and where you are incorporated.

   Matsuzato Hawaii, Inc.
   a Hawaii corporation doing business as the
   Queen Kapiolani Hotel
   175 Paoakalani Avenue, Suite 300
   Honolulu, Hawaii 96815

2. Identify all officers and directors.
   As of the date of the campaign contribution, October 1987, the officers and directors were:

Name	Nationality	Position
Kanji Kusunagi Utsukushigaoka Midori-ku Yokohama City Japan	Japan	President/Director
Ken Nishida 4-2-24 Shibuya, Shibuya ku, Tokyo, Japan	Japan	Vice President/ Director
Akio Sano 3-17-7-520 Setagaya, Setagaya ku, Tokyo, Japan	Japan	Secretary/Treasurer Director
Evelyn K. Masaki 1505 Alexander St. #806 Honolulu, Hawaii	United States	Director

9404357303 8

3. Identify all management personnel.

Name	Nationality	Position
Shigeru Tomita c/o Matsuzato Hawaii, Inc. 175 Paoakalani Avenue, Suite 300 Honolulu, Hawaii 96815	United States	General Manager since 1985

4. State whether you are a subsidiary of any entity. If so, identify all entitities with ownership rights.

Name	Nationality	Position
Kanji Kusunagi Utsukushigaoka Midori-ku Yokohama City Japan	Japan	President/Director

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

Respondent has not made any contributions to campaigns of candidates for federal elections. From mid-1986 to present, Respondent has made the following contributions to campaigns of candidates for state and local elections:

Date	Amount	Recipient (Campaign of)	Returned
5/6/87	$100	Bert Kobayashi	
2/18/87	$ 75	Dennis Nakasato	
2/18/87	$ 90	Norman Mizuguchi	
4/22/87	$ 50	Bert Kobayashi	
6/3/87	$200	Tony Kunimura	
8/26/87	$250	Frank Fasi	9/89
3/1/88	$ 50	Whitney Anderson	
3/1/88	$125	Dennis Nakasato	
4/14/88	$150	Milton Holt	
6/14/88	$250	Tony Kunimura	
9/2/88	$ 50	Tony Kunimura	
5/4/88	$125	Bert Kobayshi	
2/1/89	$100	Norman Mizuguchi	
4/28/89	$100	Bert Kobayashi	
6/20/89	$100	John Waihee	

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Except as reported by the respective campaign committees, Respondent has not filed a separate report with a state election board with respect to the foregoing contributions.

6. Identify all persons who participated in making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

Name	Nationality	Position
Shigeru Tomita c/o Matsuzato Hawaii, Inc. 175 Paoakalani Avenue, Suite 300 Honolulu, Hawaii 96815	United States	General Manager since 1985

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

   The contribution was made with funds derived from the operations of the Queen Kapiolani Hotel in Honolulu, Hawaii. No funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

   Not applicable. Respondent does not maintain a political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

   Not applicable. Respondent does not maintain a pool of funds specified for election activity.

7 4 0 4 3 5 7 3 0 4 0

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

Name	Nationality	Position
Shigeru Tomita c/o Matsuzato Hawaii, Inc. 175 Paoakalani Avenue, Suite 300 Honolulu, Hawaii 96815	United States	General Manager since 1985

94043573041

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

SHIGERU TOMITA, being first duly sworn under oath, deposes and says that he has read the foregoing Answers to Interrogatories and the same are true to the best of his knowledge and belief.

SHIGERU TOMITA

Subscribed and sworn to before me
this 18th day of June, 1990.

Notary Public, State of Hawaii

My commission expires: 11/7/90

9404357304 2

06C6704

DAMON KEY BOCKEN LEONG KUPCHAK

A LAW CORPORATION

Attorneys at Law

[illegible] Pacific Tower
[illegible] Bishop Street
Honolulu, Hawaii 96813

Telephone: (808) 531-8031
Telex: 634 807 DKBLK 634 807
Facsimile: (808) 521-2241
Cable Address: ADVICE ATTY

Laurie T. Nakamichi
R. Charles Bocken
Clinton K. L. Ching
C. F. Damon, Jr.
Troy W. Egan
Kamala I. Emta
Gerhard Fröhlich
Diane D. Hastert
Charles W. Key
Christine A. Kubota
Kenneth R. Kupchak
Denis C. H. Leong
Laurel K. S. Lee
James C. McWhinnie
Douglas D. Osterloh
Robert H. Thomas
Penelope W. Tong
Joslyn V. Wood
Michael A. Yoshida

90 JUN 25 AM 11:11
RECEIVED
FEDERAL ELECTION COMMISSION

June 21, 1990

Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Attn: Mr. Michael Troy

Re: Leyton House (Hawaii), Inc. -- MUR 2892

Dear Mr. Troy:

Pursuant to our telephone conversation on Wednesday, June 20, 1990, enclosed is the Answers to Interrogatories and Request for Production of Documents of Leyton House (Hawaii), Inc.

Mr. Toshiaki Takahashi, the general manager at the time the contribution was made, travels back and forth between Hawaii and Japan frequently. I have prepared an affidavit for his signature regarding this matter, but he left for Japan before I could catch him to sign it. I have forwarded it to his attention in Japan and will forward it to you as soon as I have received it.

I hope this provides the information necessary to clear this matter up. If you have any further questions, please do not hestitate to contact us.

Very truly yours,

DAMON KEY BOCKEN LEONG KUPCHAK

Clinton K. L. Ching
Douglas D. Osterloh

DDO:sh
Enclosure

0003g/27

90 JUN 25 PM 4:32
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

9 4 0 4 3 5 7 3 0 4 3

Of Counsel:
DAMON KEY BOCKEN LEONG KUPCHAK
Attorneys at Law
A Law Corporation

CLINTON K. L. CHING 516-0
DOUGLAS D. OSTERLOH 4708-0
1600 Pauahi Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Telephone: 531-8031

Attorneys for LEYTON HOUSE
(HAWAII), INC.

BEFORE THE FEDERAL ELECTION COMMISSION

Matter Under Review Of	)	MUR No. 2892
	)	
LEYTON HOUSE (HAWAII), INC.	)	ANSWERS TO INTERROGATORIES
	)	AND REQUEST FOR PRODUCTION
	)	OF DOCUMENTS OF LEYTON HOUSE
	)	(HAWAII), INC.
	)	

ANSWERS TO INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS OF LEYTON HOUSE (HAWAII), INC.

The following is the response of Leyton House (Hawaii), Inc. to the Interrogatories and Request for Production of Documents served by letter dated May 21, 1990 and received in our office on May 24, 1990.

1. Leyton House (Hawaii), Inc.
   2255 Kuhio Avenue, Suite 1002
   Honolulu, Hawaii 96815

   Incorporated in the State of Hawaii on November 8, 1985.

9 4 0 4 3 5 7 3 0 4 4

2. **Directors:**

Akira Akagi
Residence address: 5-3-44 Minami Azabu 302,
Minato-ku, Tokyo, Japan 106
Business address: 8-11-20 Akasaka
Minato-ku, Tokyo, Japan

Telephone: Residence (03) 441-2272
Business (03) 497-1611
Present occupation: Business/Real Estate Investor
Affilation with Leyton House (Hawaii), Inc.:
Sole shareholder and President/Director of
Leyton House (Hawaii), Inc.
Resident and citizen of Japan.

Masato Yashima
Residence address: 1-13 Yotsuya #205,
Shinjuku, Tokyo, Japan 160
Business address: 8-11-20 Akasaka
Minato-ku, Tokyo, Japan

Telephone: Residence (03) 358-6336
Business (03) 497-1611
Present occupation: _____
Affilation with Leyton House (Hawaii), Inc.:
Vice President/Treasurer/Director of Leyton House
(Hawaii), Inc.
Resident and citizen of Japan.

Toshiaki Takahashi
Residence address: 3-30-2 Minami Magome
Ota-ku, Tokyo, Japan 143

Business address: New Akasaka Corporouse #706
8-12-14 Akasaka
Minato-ku, Tokyo 107 Japan

Telephone: Residence (03) 772-5405
Business (03) 423-1720
Present occupation: Restaurant Business President
Affiliation with Leyton House (Hawaii), Inc.
Vice President/Secretary/Director of Leyton House
(Hawaii), Inc. from November 8, 1985 through
May 1, 1989.
Citizen of Japan, lawful permanent resident of
U.S. During tenure with Leyton House Mr
Takahashi was a resident of U.S., and is
presently a resident of Japan.

9404357304 5

Kenneth K. Nakamura
Residence address: 500 University Avenue, #904
Honolulu, Hawaii 96826
Business address: 2255 Kuhio Avenue,
Suite 1002
Honolulu, Hawaii 96815
Telephone: Residence 946-7200
Business 924-7200
Present occupation: General Manager of Leyton House (Hawaii), Inc. and Secretary/General Manager/Director of Leyton House (Hawaii), Inc.
Resident and citizen of United States.

3. Toshiaki Takahashi, General Manager
11/8/85 through 5/1/89
(See above)

Kenneth K. Nakamura, General Manager
5/1/89 through present
(See above)

4. Leyton House (Hawaii), Inc. is not a subsidiary of any entity. The stock is 100% owned by Mr. Akira Akagi.

5. Contributions: Friends for Fasi: $500.00 on August 7, 1987.

No refunds have been made.

Leyton House (Hawaii), Inc. is not required to file reports with any state election board.

6. The sole decision to make the contribution listed in paragraph 5 above was that of Mr. Toshiaki Takahashi, the General Manager of Leyton House (Hawaii), Inc. at the time.

7. The source of funds for the contribution listed in paragraph 5 above was from corporate earnings (real estate rental income and profits from sale of real property) of Leyton House (Hawaii), Inc. No funds were provided directly or indirectly by a foreign national.

8. Leyton House (Hawaii), Inc. does not maintain a political action committee.

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9. Leyton House (Hawaii), Inc., does not maintain a pool of funds for election activities.

10. Kenneth K. Nakamura.
I have been an employee of Leyton House (Hawaii), Inc. since July 1, 1986. I have been the General Manager since May 1, 1989.

Request for Production of Documents: Leyton House (Hawaii), Inc. is not required to file any election reports, and therefore, has no documents to produce.

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STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

KENNETH K. NAKAMURA, being first duly sworn, on oath deposes and says: That he is authorized to answer the foregoing interrogatories, and that the foregoing answers to interrogatories are true and correct to the best of his knowledge and belief.

Further affiant sayeth naught.

KENNETH K. NAKAMURA

Subscribed and sworn to before me
this 21 day of June, 1990.

Notary Public, State of Hawaii

My Commission Expires: 2/18/92

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00C6702

GOODSILL ANDERSON QUINN & STIFEL

ATTORNEYS AT LAW

1600 BANCORP TOWER
130 MERCHANT STREET
HONOLULU, HAWAII 96813

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RICHARD S. STIFEL
HUGH WHARAM
OSMO KAMPMA
C. ERSKIN GARLAND
CONRAD M. WEIMER
DAVID J. EBERLAIN
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CECILIA C. SIERRA
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LYNNE TAMARA TOYOFUKU
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MICHAEL F. HALTOMAS
KELLIE M. H. SEKIYA
HENRY T. HAKAMOTO
JUDY Y. LEE
DONALD R. MEDANI

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RANDALL W. ROTH
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OF COUNSEL
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PHONE (808) 329-7731
FACSIMILE (808) 326-2984

/73060

June 19, 1990

90 JUN 25 AM 11:36

90 JUN 25 PM 1:26

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Michael Troy
Office of the General
Counsel
Federal Election Commission
Room 659
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2892 - Grosvenor International (Hawaii) Limited

Dear Mr. Troy:

This will confirm that you telephoned me on June 14, 1990 to inform me that the Federal Election Commission would not entertain our request to pursue pre-probable cause conciliation until Grosvenor International (Hawaii) Limited submits answers to the questions that were enclosed with the letter addressed to me dated May 21, 1990.

The May 21, 1990 letter suggested that, if we were interested in pursuing pre-probable cause conciliation, we should make that request in writing. We did make such a written request in my letter to Patty Reilly, dated June 7, 1990. As stated in my June 7 letter, in making our request to enter into negotiations for pre-probable cause conciliation, we assumed that all proceedings in MUR 2892 were automatically stayed until the conclusion of conciliation proceedings or the determination that negotiations for such conciliation are no longer fruitful. In our conversation on June 14, you informed me that the Commission would not enter into pre-probable cause conciliation until it has received answers to the interrogatories.

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We hereby respectfully request an extension of twenty (20) days from the date of this letter to provide answers to said interrogatories. While we have already instructed our client to proceed with answering the questions, we believe that at least twenty (20) days will be required.

Very truly yours,

GOODSILL ANDERSON QUINN & STIFEL

Russell S. Kato

Russell S. Kato

RSK:sr

P 4 0 4 3 5 7 3 0 5 0

OGC 6697

GOODSILL ANDERSON QUINN & STIFEL

ATTORNEYS AT LAW

1600 BANCORP TOWER
130 MERCHANT STREET
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FACSIMILE (808) 531-2628 TELEPHONE (808) 547-5600 TELEX 7430246 (RCD)

/74114

June 19, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Michael Troy
Office of the General
Counsel
Federal Election Commission
Room 659
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2892 and 3004 - Otaka, Inc.

Dear Mr. Troy:

This will confirm our telephone conversation on June 14, 1990 in which you advised me that the Federal Election Commission would not allow a stay of proceedings in MUR 2892 with respect to Otaka, Inc. pending the outcome of MUR 3004.

MUR 2892 and MUR 3004 both involve complaints in which violations of 2 U.S.C. Section 441e are alleged. Since we have received no notification of action taken by the Commission with respect to MUR 3004, I requested in a letter to Patty Reilly, Esq., dated June 7, 1990 that all proceedings in MUR 2892 be stayed pending Otaka, Inc.'s receipt of notification of the Commissioner's action in MUR 3004.

While we have since instructed our client to proceed with answering the questions, we believe that at least twenty (20) days from the date of this letter will be required. Accordingly, we request an extension of

90 JUN 25 PM 1:36
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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

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twenty days from the date of this letter in which to provide answers to the interrogatories.

Very truly yours,

GOODSILL ANDERSON QUINN & STIFEL

Russell S. Kato

Russell S. Kato

RSK:sr

2404357302

001 6699

GOODSILL ANDERSON QUINN & STIFEL
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/73040

June 19, 1990

90 JUN 25 AM 11:36

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Michael Troy
Office of the General
Counsel
Federal Election Commission
Room 659
999 E Street, N.W.
Washington, D.C. 20463

90 JUN 25 PM 1:26
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Re: MUR 2892 - Pacifico Creative Service, Inc.

Dear Mr. Troy:

This will confirm that you telephoned me on June 14, 1990 to inform me that the Federal Election Commission would not entertain our request to pursue pre-probable cause conciliation until Pacifico Creative Service, Inc. submits answers to the questions that were enclosed with the letter addressed to me dated May 21, 1990.

The May 21, 1990 letter suggested that, if we were interested in pursuing pre-probable cause conciliation, we should make that request in writing. We did make such a written request in my letter to Patty Reilly, dated June 7, 1990. As stated in my June 7 letter, in making our request to enter into negotiations for pre-probable cause conciliation, we assumed that all proceedings in MUR 2892 were automatically stayed until the conclusion of conciliation proceedings or the determination that negotiations for such conciliation are no longer fruitful. In our conversation on June 14, you informed me that the Commission would not enter into pre-probable cause conciliation until it has received answers to the interrogatories.

2 4 0 4 3 5 7 3 0 5 3

We hereby respectfully request an extension of twenty (20) days from the date of this letter to provide answers to said interrogatories. While we have already instructed our client to proceed with answering the questions, we believe that at least twenty (20) days will be required.

Very truly yours,

GOODSILL ANDERSON QUINN & STIFEL

Russell S. Kato

Russell S. Kato

RSK:sr

2404357305 4

DOC 6698

GOODSILL ANDERSON QUINN & STIFEL

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CONRAD M. [illegible]
DAVID J. DEGANI
RICHARD T. IBREDA*
ROBERT O. HITT
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DAVID J. [illegible]
H. MITCHELL D'OLIER
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/72704

June 19, 1990

90 JUN 25 AM 11:36

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Michael Troy
Office of the General
Counsel
Federal Election Commission
Room 659
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2846 - Japan Air Lines Co., Ltd.

90 JUN 25 PM 1:26

Dear Mr. Troy:

This will confirm that you telephoned me on June 14, 1990 to inform me that the Federal Election Commission would not entertain our request to pursue pre-probable cause conciliation until Japan Air Lines Co., Ltd. submits answers to the questions that were enclosed with the letter addressed to me dated May 21, 1990.

The May 21, 1990 letter suggested that, if we were interested in pursuing pre-probable cause conciliation, we should make that request in writing. We did make such a written request in my letter to Patty Reilly, dated June 7, 1990. As stated in my June 7 letter, in making our request to enter into negotiations for pre-probable cause conciliation, we assumed that all proceedings in MUR 2846 were automatically stayed until the conclusion of conciliation proceedings or the determination that negotiations for such conciliation are no longer fruitful. In our conversation on June 14, you informed me that the Commission would not enter into pre-probable cause conciliation until it has received answers to the interrogatories.

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Mr. Michael Troy
June 19, 1990
Page 2

We hereby respectfully request an extension of twenty (20) days from the date of this letter to provide answers to said interrogatories. While we have already instructed our client to proceed with answering the questions, we believe that at least twenty (20) days will be required.

Very truly yours,

GOODSILL ANDERSON QUINN & STIFEL

Russell S. Kato

Russell S. Kato

RSK:sr

9404357306

EOC 6735

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUN 26 PM 1:47

PAUL, JOHNSON, ALSTON & HUNT

ATTORNEYS AT LAW A LAW CORPORATION

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Cable PACIFICLAW
Telex PACLAW 634377
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FAX (808) 528 1654

MAUI OFFICE
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2145 Kaohu Street
Post Office Box 870
Wailuku, Hawaii 96793 0870
FAX (808) 244 9775

June 22, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 26 PM 3:12

VIA FAX AND U.S. MAIL

Michael Troy, Esq.
Staff Attorney
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Re: Tetsuo and Yasuo Yasuda, MUR 2892

Dear Mr. Troy:

This letter confirms today's telephone conversation in which you acknowledged receipt of my letter to Patty Reilly, Esq. dated June 5, 1990 which requests an extension of time to respond to the charges made against Messrs. Yasuda. I understand that by letter dated June 8, 1990, you have granted our request and that our response is now due on June 29, 1990.

Thank you for your cooperation with this matter.

Very truly yours,

Robyn B. Chun

ROBYN B. CHUN

RBC:lhc:1473N

cc: clients

HONOLULU James T. Paul, David A. Johnson, Paul Alston, William S. Hunt, Corey Y. S. Park, Shelby Anne Floyd, Louise K. Y. Ing, Sheryl L. Nicholson, Chad Taniguchi, Ellen Godbey Carson, Robyn B. Chun, Everett S. Kaneshige, Elizabeth Kent, Mei Nakamoto, Judith L. Neustadter, Bruce S. Nobonkawa
MAUI Dennis Niles, William M. McKeon, Joanne V. Louie

OGC 6734

FUJIYAMA, DUFFY & FUJIYAMA
ATTORNEYS AT LAW, A LAW CORPORATION
SUITE 2700, PAUAHI TOWER, BISHOP SQUARE
1001 BISHOP STREET
HONOLULU, HAWAII 96813

TELEPHONE (808) 536-0602
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JAMES J. STONE
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RALPH R. LA FOUNTAINE
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NANCY J. RYAN
SCOTT S. HASHIMOTO
WYNDE M. TAKAMOTO
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WARD F. N. FUJIMOTO
DEXTER D. DEL ROSARIO
ROSS N. TAOSAKA
CHRIS A. THOMAS
VINCENT A. RHODES
DIANE K. TAIRA
MICHAEL T. LEE

90 JUN 26 PM 1:48

June 22, 1990

RECEIVED
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OFFICE OF GENERAL COUNSEL
90 JUN 26 PM 3:12

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Office of the General Counsel
Federal Election Commission
Washington, D. C. 20463

Attn: Mr. Michael Troy

Re: MUR 2892
Benjamin J. Cayetano Campaign Committee

Dear Mr. Troy:

Please find enclosed herewith the Response of the Cayetano for Lieutenant Governor Campaign Committee to the Complaint of the Federal Election Commission and to the Interrogatories and Request for Production of Documents of the Federal Election Commission.

This is also to request that pre-probable cause conciliation be pursued with the Respondent in the above-referenced matter. We request to engage in such conciliation in view of the following factors:

(1) At the time the subject contributions were received, Respondent, along with most state and local campaign organizations in this state at that time, were unaware of the Federal Election Commission's regulations with respect to contributions from foreign nationals. There had been very little public awareness of any contention of the applicability of the Federal Election Campaign Law to any aspect of state and local elections. In fact, the State's Campaign Spending Commission Director professed his lack of knowledge of the applicability of 2 U.S.C. Section 441e to state and local elections.

(2) At the time the subject contributions were received, Respondent, was unaware of the nationality of the contributors. No inquiry into the nationality of the

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contributors had been made since Respondent was unaware of the provisions of 2 U.S.C. Section 441e and 11 C.F.R. 110.4(a)(1).

(3) Upon learning of the prohibition set forth in 2 U.S.C. Section 441e, Respondent promptly took steps to ensure that the funds received from the foreign nationals were not used in connection with any election to any political office but instead contributed, with the approval and consent of the contributors, to non-profit entities and charities.

Based upon these considerations, we therefore request that you entertain entering to a conciliation agreement with the Cayetano for Lieutenant Governor Campaign Committee.

Very truly yours,

FUJIYAMA, DUFFY & FUJIYAMA
Attorneys At Law, A Law
Corporation

By COLBERT M. MATSUMOTO

CMM:jt/0480

Enclosures

cc: Cayetano for Lieutenant
Governor Campaign Committee

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FUJIYAMA, DUFFY & FUJIYAMA

COLBERT M. MATSUMOTO 2276-0
Suite 2700, Pauahi Tower
Bishop Square
1001 Bishop Street
Honolulu, Hawaii 96813
Telephone No. 536-0802

Attorney for Respondent
CAYETANO FOR LIEUTENANT
GOVERNOR CAMPAIGN COMMITTEE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2892
	)	

RESPONSE OF CAYETANO FOR LIEUTENANT GOVERNOR CAMPAIGN COMMITTEE TO FEDERAL ELECTION COMMISSION COMPLAINT

Comes now, the CAYETANO FOR LIEUTENANT GOVERNOR CAMPAIGN COMMITTEE ("Respondent"), by and through its attorney, COLBERT M. MATSUMOTO, and responds to the Complaint (MUR 2892) of the Federal Election Commission dated May 21, 1990 ("Complaint"), as follows:

1. Respondent contends that the Complaint is not timely as of the alleged receipt of contributions in violation of 2 U.S.C. § 441e occurred on October 16 1986, which is more than three (3) years from the date of the Complaint (May 21, 1990). Although the Complaint refers back to a complaint dated March 29, 1989 (MUR 2846) that earlier complaint is not directed against Respondent. No complaint formally alleging any violation of 2 U.S.C. § 441e was initiated against Respondent until the instant Complaint was filed. Consequently, since more than three (3) years have elapsed since the date of the alleged violation, the Complaint is not timely and is barred by the statute of limitations. 2 U.S.C. § 455.

2. Alternatively, Respondent admits that it received campaign contributions totaling $8,000.00 on October 16, 1986, from four persons who were subsequently determined to be "foreign nationals".

(a) At the time the subject contributions were received, Respondent, along with most state and local campaign

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organizations in Hawaii at that time, were unaware of the Federal Election Commission's regulations with respect to campaign contributions from "foreign nationals". There had been very little public awareness of any contention of the applicability of the Federal Election Campaign Act to any aspect of state and local elections. In fact, the director of the Campaign Spending Commission of the State of Hawaii himself professed his lack of knowledge of the applicability of 2 U.S.C. § 441e to state and local elections.

(b) At the time the subject contributions were received, Respondent, was unaware of the nationality of the contributors. No inquiry regarding the nationality of the contributors had been made since Respondent was unaware of the applicability of 2 U.S.C. § 441e and 11 C.F.R. 110.4(a)(1).

(c) Upon learning of the prohibition set forth in 2 U.S.C. § 441e, Respondent promptly took steps to ensure that the funds received from "foreign nationals" were not used in connection with any election to political office but instead contributed to non-profit organizations and charities with the consent and approval of the contributors.

(d) Since learning of the prohibition of 2 U.S.C. § 441e, Respondent has instituted new procedures to review campaign contributions it receives to ensure that no contribution is received from a "foreign national" in violation of 2 U.S.C. § 441e or if such a contribution is inadvertently received, that it is promptly returned to the contributor. At this time Respondent is unaware of its receipt of any other campaign contribution from any "foreign national" in violation of 2 U.S.C. § 441e.

Respondent therefore requests as follows:

A. That the Complaint of the Federal Election Commission (MUR 2892) be dismissed as untimely; or

B. That based upon the foregoing considerations no action be taken against Respondent.

DATED: Honolulu, Hawaii, JUN 21 1990.

COLBERT M. MATSUMOTO
Attorney for Respondent
CAYETANO FOR LIEUTENANT
GOVERNOR CAMPAIGN COMMITTEE

0486/jt

2 4 0 4 3 5 7 3 0 6 1

FUJIYAMA, DUFFY & FUJIYAMA

COLBERT M. MATSUMOTO 2276-0
Suite 2700, Pauahi Tower
Bishop Square
1001 Bishop Street
Honolulu, Hawaii 96813
Telephone No. 536-0802

Attorney for Respondent
CAYETANO FOR LIEUTENANT
GOVERNOR CAMPAIGN COMMITTEE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2892
	)	

RESPONSE OF CAYETANO FOR LIEUTENANT GOVERNOR CAMPAIGN COMMITTEE TO INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS BY THE FEDERAL ELECTION COMMISSION

Comes now, the CAYETANO FOR LIEUTENANT GOVERNOR CAMPAIGN COMMITTEE, by BENJAMIN J. CAYETANO, and responds to the Interrogatories propounded by the Federal Election Commission as follows:

1. Regarding the complaint or complaints you received in the above captioned matter, state whether you have received any contributions from the alleged foreign nationals noted in the complaint. If so, for each, list the name of the contributor, amount, date, and whether or not such contribution has been refunded.

RESPONSE: Contributions were received from the following individuals on October 16, 1986:

Etyu Nomura	$2,000.00
Yusaku Nomura	$2,000.00
Shushi Nomura	$2,000.00
Koji Nomura	$2,000.00

On May 2, 1989, the foregoing contributions were donated, with the approval and consent of the contributors, to non-profit organizations and charities. None of the funds were retained for use in connection with any election to any political

2404357306 2

office or in connection with any primary election, convention, or caucus held to select candidates for any political office. The entities to which the funds were donated and the respective amounts are as follows:

Aloha United Way	$4,000.00
Child and Family Services	$1,000.00
Institute for Human Services	$1,000.00
Justice Benjamin Menor Scholarship Fund	$ 500.00
Japanese American Citizens League	$ 500.00
American Civil Liberties Union	$ 500.00
Na Loio No Na Kanaka	$ 500.00

2. List all other contributions received from foreign nationals, and for each, list the name of the contributor, amount, date, and whether or not such contribution has been refunded.

RESPONSE: To the best of our knowledge, we have not received contributions from "foreign nationals" other than the foregoing identified individuals.

DATED: Honolulu, Hawaii, June 21st, 1990.

Benjamin J. Cayetano

BENJAMIN J. CAYETANO, for the
Cayetano For Lieutenant
Governor Campaign Committee

0486/jt

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STATE OF HAWAII)
: SS.
CITY AND COUNTY OF HONOLULU)

BENJAMIN J. CAYETANO, being first duly sworn, on oath, deposes and says: that he has read the answers to the foregoing Interrogatories; and that the same are true to the best of his knowledge and belief.

Benjamin J. Cayetano
BENJAMIN J. CAYETANO

Subscribed and sworn to before me
this 21st day of July,
1990.

Karen K Murph
Notary Public, State of Hawaii
My commission expires: 1-15-92

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RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

90 JUN 22 PM 3:13

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	
	)	MUR 2892
Ohbayashi Hawaii Corp.	)	
Taiyo Hawaii Company, Ltd.	)	
Pan-Pacific Development, Inc.	)	
Hawaii Omori Corporation	)	
Nitto Hawaii Co., Ltd.	)	
Pacifico Creative Services	)	
Grosvenor International (Hawaii) Limited	)	
Japan Air Lines Co., Ltd.	)	
Azabu Realty, Inc.	)	
Azabu U.S.A. Corporation	)	
Friends of Frank Fasi	)	

GENERAL COUNSEL'S REPORT

I. **BACKGROUND**

On May 1, 1990, the Commission found reason to believe the above-named respondents violated 2 U.S.C. § 441e. At the same time, the Commission approved sample questions to be sent to the named parties. None of the above-named respondents have submitted answers to those questions, which were sent to them on May 21, 1990.

Between June 1, 1990 and June 12, 1990 the above-named respondents requested conciliation prior to a finding of probable cause to believe.

II. **ANALYSIS**

Because respondents have not submitted answers to the questions sent to them, this Office recommends that the Commission deny respondents' requests for conciliation at this time. After receiving answers to the questions, this Office will report to the Commission.

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III. RECOMMENDATIONS

1. Decline, at this time, to enter into conciliation with Ohbayashi Hawaii Corp., Taiyo Hawaii Company, Ltd., Pan-Pacific Development, Inc., Hawaii Omori Corporation, Nitto Hawaii Co., Ltd., Pacifico Creative Services, Grosvenor International (Hawaii) Limited, Japan Air Lines Co., Ltd., Azabu Realty, Inc., Azabu U.S.A. Corporation, and Friends of Frank Fasi, prior to a finding of probable cause to believe.

2. Approve the appropriate letters.

Date 6/22/90

Lawrence M. Noble
General Counsel

Attachments
1. Requests for Conciliation
2. Letters

Staff Assigned: Michael J. Troy

9404357306 6

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Ohbayashi Hawaii Corp.	)	
Taiyo Hawaii Company, Ltd.	)	
Pan-Pacific Development, Inc.	)	MUR 2892
Hawaii Omori Corporation	)	
Nitto Hawaii Co., Ltd.	)	
Pacifico Creative Services	)	
Grosvenor International (Hawaii) Limited	)	
Japan Air Lines Co., Ltd.	)	
Azabu Realty, Inc.	)	
Azabu U.S.A. Corporation	)	
Friends of Frank Fasi	)	

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CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 27, 1990, the Commission decided by a vote of 6-0 to take the following actions in MUR 2892:

1. Decline, at this time, to enter into conciliation with Ohbayashi Hawaii Corp., Taiyo Hawaii Company, Ltd., Pan-Pacific Development, Inc., Hawaii Omori Corporation, Nitto Hawaii Co., Ltd., Pacifico Creative Services, Grosvenor International (Hawaii) Limited, Japan Air Lines Co., Ltd., Azabu Realty, Inc., Azabu U.S.A. Corporation, and Friends of Frank Fasi, prior to a finding of probable cause to believe.

(continued)

2. Approve the letters, as recommended in the General Counsel's Report dated June 22, 1990.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision.

Attest:

June 27, 1990
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Friday, June 22, 1990 3:13 p.m.
Circulated to the Commission: Monday, June 25, 1990 11:00 a.m.
Deadline for vote: Wednesday, June 27, 1990 11:00 a.m.

dh

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

July 10, 1990

Mr. Russell S. Kato, Esq.
Goodsill, Anderson, Quinn & Stifel
1600 Bancorp Tower
130 Merchant Street
Honolulu, Hawaii 96801

RE: MUR: 2892
Pacifico Creative Services, Inc.
Grosvenor Hawaii International
Japan Air Lines Co., Ltd.

Dear Mr. Kato:

On May 21, 1990 you were notified that the Federal Election Commission found reason to believe that your clients, Pacifico Creative Services, Inc., Grosvenor Hawaii International, Ltd., and Japan Air Lines Co., Ltd. violated 2 U.S.C. § 441e. On June 7, 1990, you submitted requests on behalf of the three above-named respondents to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has reviewed your request and determined to decline at this time to enter into conciliation prior to a finding of probable cause to believe because additional information is necessary. At the time the Commission considered your request for conciliation negotiations it had not received full and and complete answers to the interrogatories sent to you on May 21, 1990.

At such time when the investigation in this matter has been completed, the Commission will reconsider your requests to enter into conciliation prior to a finding of probable cause to believe.

If you have any questions, please contact Michael J. Troy, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

July 10, 1990

Mr. Karl K. Kobayashi, Esq.
Carlsmith, Wichman, Case,
Mukai, and Ichiki
1001 Bishop Street
Pacific Tower, Suite 2200
Honolulu, Hawaii 96813

RE: MUR: 2892
Taiyo Hawaii Company, Ltd.
Pan-Pacific Development, Inc.
Hawaii Omori Corporation
Nitto Hawaii Co., Ltd.

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Dear Mr. Kobayashi:

On May 21, 1990 you were notified that the Federal Election Commission found reason to believe that your clients, Taiyo Hawaii Company, Pan-Pacific Development, Inc., Hawaii Omori Corporation, and Nitto Hawaii Co., Ltd. violated 2 U.S.C. § 441e. On June 12, 1990, you submitted requests on behalf of the four above-named respondents to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has reviewed your requests and determined to decline at this time to enter into conciliation prior to a finding of probable cause to believe because additional information is necessary. We must receive full and complete answers to the interrogatories sent to you on May 21, 1990 before the Commission can consider your request for conciliation negotiations. Such information should be submitted to the Office of the General Counsel by the time specified in those letters.

At such time when the investigation in this matter has been completed, the Commission will reconsider your requests to enter into conciliation prior to a finding of probable cause to believe.

If you have any questions, please contact Michael J. Troy, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois Lerner
Associate General Counsel

94043573071

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 10, 1990

Mr. Kevin S. C. Chang
Kobayashi, Watanabe, Sugita,
Kawashima, & Goda
Hawaii Tower, 8th Floor
745 Fort Street
Honolulu, Hawaii 96813-3889

RE: MUR: 2892
Ohbayashi Hawaii Corp.

Dear Mr. Chang:

On May 21, 1990 you were notified that the Federal Election Commission found reason to believe that your client, Ohbayashi Corp. violated 2 U.S.C. § 441e. On June 3, 1990, you submitted a request to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has reviewed your request and determined to decline at this time to enter into conciliation prior to a finding of probable cause to believe because additional information is necessary. At the time the Commission considered your request for conciliation negotiations it had not received full and and complete answers to the interrogatories sent to you on May 21, 1990.

At such time when the investigation in this matter has been completed, the Commission will reconsider your request to enter into conciliation prior to a finding of probable cause to believe.

If you have any questions, please contact Michael J. Troy, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 10, 1990

Mr. Raymond S. Iwamoto, Esq.
Goodsill, Anderson, Quinn, & Stifel
1600 Bancorp Tower
130 Merchant Street
Honolulu, Hawaii 96813

RE: MUR: 2892
Azabu Realty, Inc.
Azabu U.S.A. Corporation

Dear Mr. Iwamoto:

On May 21, 1990 you were notified that the Federal Election Commission found reason to believe that your clients, Azabu Realty, Inc. and Azabu U.S.A. Corporation violated 2 U.S.C. § 441e. On June 6, 1990, you submitted requests on behalf of the four above-named respondents to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has reviewed your request and determined to decline at this time to enter into conciliation prior to a finding of probable cause to believe because additional information is necessary. At the time the Commission considered your request for conciliation negotiations it had not received full and and complete answers to the interrogatories sent to you on May 21, 1990.

At such time when the investigation in this matter has been completed, the Commission will reconsider your requests to enter into conciliation prior to a finding of probable cause to believe.

If you have any questions, please contact Michael J. Troy, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 10, 1990

Mr. Howard R. Green
Green, Ning, Lilly, & Jones
707 Richards Street, Suite 700
Honolulu, Hawaii 96813

Re: MUR 2892
Friends of Fasi

Dear Mr. Green:

On May 21, 1990 you were notified that the Federal Election Commission found reason to believe that your client, Friends of Frank Fasi violated 2 U.S.C. § 441e. On June 11, 1990, you submitted requests on behalf of Friends of Frank Fasi to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has reviewed your request and determined to decline at this time to enter into conciliation prior to a finding of probable cause to believe because additional information is necessary. At the time the Commission considered your request for conciliation negotiations it had not received full and complete answers to the interrogatories sent to you on May 21, 1990.

At such time when the investigation in this matter has been completed, the Commission will reconsider your request to enter into conciliation prior to a finding of probable cause to believe.

Also, your letter dated June 11, 1990, asks for several clarifications of the Commission's questions sent to you on May 21, 1990. With regard to what elements the Commission deems critical in determining which contributors are foreign nationals, I would refer to the factual and legal analysis sent to you with the interrogatories. Part C, beginning on page 9 and continuing through page 10 explains what elements must be met for a contribution to be legal under 2 U.S.C. § 441e.

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Another issue, which one of your colleagues raised during a phone conversation with Michael Troy of this office on June 22, 1990, indicated that you did not believe that returned contributions from foreign nationals were illegal. In response, I refer you to 11 CFR § 103.3(b), which describes how a campaign must handle an illegal, or possibly illegal contribution so as to avoid a violation.

The Commission decided to merge MUR 2846 with MUR 2892 because of the administrative efficiency of handling common issues of fact and law as a single investigative matter. The merger does not require the parties to work together, nor will it affect each individual party's ability to settle the matter as it pertains to them, or to take the matter to litigation.

If you have any questions please contact Michael J. Troy, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
MAIL ROOM

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Iwai, Motooka & Goto

ATTORNEYS AT LAW
A LAW CORPORATION
SUITE 502, HASEKO CENTER
820 MILILANI STREET
HONOLULU, HAWAII 96813

WILFRED K. IWAI
MILTON M. MOTOOKA
ARTHUR K. GOTO

AREA CODE 808
TELEPHONE 537-1935
FAX 528-5813

June 25, 1990

Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Ladies and Gentlemen:

Re: MUR 2892-Haseko (Hawaii), Inc., fka Hasegawa Komuten (Hawaii), Inc.

1. This office continues to represent the respondent Haseko (Hawaii), Inc., a Hawaii corporation in this matter. In providing the respondent's response to the Commission's Interrogatories and Request for Production of Documents which accompanied the Commission's letter dated May 21, 1990, the respondent would like the Commission to be apprised of the following.

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OFFICE OF GENERAL COUNSEL
90 JUN 27 PM 3:10

2. Respondent made political contributions to candidates for local and state elections on the understanding that such contributions were not prohibited by federal law. Respondent would like the Commission and its staff to know that it attempts to abide by all statutes, as well as rules and regulations of which they are aware. Should it be determined that respondent was in violation of the Commission's rules and/or federal statute, a fact which is not admitted by respondent at present, it was done inadvertently and in ignorance of any such povisions.

3. For the present time, and with due respect to the memorandum of the Commission's staff accompanying the Commission's letter dated May 21, 1990, and their position to the contrary, respondent continues to raise the question of the scope of the Federal Election Campaign Act, and the Commission's jurisdiction, believing, based on advice of its counsel, that the Act does not apply to local and State elections of candidates.

4. This office also notes that the original complaint in this matter related to a contribution made in 1987. The response of respondent was prepared on that basis. The Interrogatories of the Commission however, relate to the period commencing in 1986. Many of the personnel of respondent who

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were present in 1986 are no longer in Hawaii and we believe it is unfair to them to be placed under the scrutinty of the Commission's inquiry for contributions which were made prior to 1988. If the case progresses to litigation in the Federal District Court, the burden placed on respondent to reconstruct the process by which contributions prior to 1988 were made is very costly and time consuming given the change of personnel. We would therefore request the consideration of the Commission in limiting its inquiry to the period from January 1, 1988. We note that the statute of limitations would appear to have run on any 1986 contribution and some of the 1987 contributions. 2 USCA §455(a).

5. Finally, with apologies to the Commission it is necessary for us to correct a statement in the Affidavit of Katsuo Shimizu, submitted with the response of this office, which response was dated July 3, 1989. In paragraph 1 of the Affidavit which was executed by Mr. Shimizu on July 3, 1989, Mr. Shimizu states that he is a permanent resident alien. It has been called to my attention that though Mr. Shimizu has applied for such status, that it has not, yet been granted. Apparently in reviewing the Affidavit he missed that portion of the Affidavit, which had been drafted by this office.

6. We enclose herewith the response of respondent to the Commission's Interrogatories and Request for Production of Documents which accompanied its letter dated May 21, 1990. The documents being produced herewith have been marked with the identification numbers "HK 0001" through "HK 0012".

7. In the event these materials do not clearly make the point, please be advised that Mr. Sheldon, who is a United States citizen, and is presently the Executive Vice President of respondent corporation, makes all decisions with regard to any authorized political contribution to any candidate for public elective office, and no Japanese national who does not have permanent resident alien status has any control over that process. While this process has definitely been in effect since the spring or early summer of 1988, it may have been the case for earlier contributions as well. We are still attempting to look into those earlier contributions, but our deadline for the Interrogatories requires us to respond as set forth in the Answers at this time.

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Iwai, Motooka & Goto
ATTORNEYS AT LAW
A LAW CORPORATION

7. Thank you for your courtesy to date. We look forward to your further response.

Very truly yours,

Arthur K. Goto

ARTHUR K. GOTO

enc.
AKG:
8628C

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3020s

IWAI, MOTOOKA & GOTO
Attorneys at Law
A Law Corporation

ARTHUR K. GOTO 1186-0
Suite 502, Haseko Center
820 Mililani Street
Honolulu, Hawaii 96813
Telephone: 537-1935

Attorney for Defendants

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of) MUR 2982
)
)

ANSWERS TO INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: The Federal Election Commission

FROM: Haseko (Hawaii), Inc.

1. State your name, local address, business, and where you are incorporated.

Haseko (Hawaii), Inc.
Suite 820 Haseko Center
820 Mililani Street
Honolulu, Hawaii 96813

Incorporated in the State of Hawaii

2. Identify all officers and directors.

See Exhibit "A" attached hereto and incorporated herein by reference.

3. Identify all management personnel.

Objection to the term "management personnel" as being vague, ambiguous and misleading. Subject to such objection, and without waiver thereof, respondent answers that to the best it understands such question, and to the extent relevant to these proceedings, the following persons were among those who may be referred to as "management personnel". Respondent further advises that the period of inquiry, being from January 1, 1986, is quite a long time ago, and thus memories of present personnel are often quite vague as to

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that late period. However, the following information is furnished.

Mr. Toshinobu Kakizawa, presently residing in Japan, to the best information of the representative of respondent responding to these interrogatories.

Mr. Katsu Shimizu, presently residing in Honolulu, Hawaii

Mr. Henry Sheldon, presently residing in Honolulu, Hawaii

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

Objection to the terms "subsidiary" and "ownership rights" as being vague and ambiguous. Subject to such objection, however, and without waiver thereof, to the extent the question is understood by respondent, the following information is furnished.

Respondent is probably considered to be a "subsidiary" of
Haseko Cororation, fka Hasegawa Komuten Co., Ltd.,
a Japan corporation which owns the vast majority of
stock of respondent
32-1 Shiba 2-Chome
Minato-ku, Tokyo Japan

Other corporations or stock companies at various times have held some stock of respondent, but would not be considered to be major stockholders.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

See Exhibit "B" attached hereto and incorporated herein by reference.

The Campaign Spending Commission of the State of Hawaii has advised respondent that certain reports are required by respondent, and such reports have been filed with that agency.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

Objection is made to the phrase "all persons who participated in the making of each contribution noted above"

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on the grounds the term is vague, and ambiguous, and therefore misleading; further that the request is unduly burdensome in light of the time period covered and the number of contributions listed in Exhibit "A" attached hereto and incorporated herein by reference.

Subject to the foregoing objection, and without waiver thereof, respondent responds to the extent it understands the question and to the extent relevant to the present inquiry, as follows.

To the best recollection and understanding of your representative of respondent answering these Interrogatories, polictical contributions made by respondent may result either from a request received from the candidate or someone on the candidate's behalf, or an organization on such candidate's behalf. It may also result from the request of an employee of the respondent who may be familiar with a particular candidate and believes the candidate to be worthy of support.

From a period somewhere in 1988, requests were referred to the undersigned representative of respondent for consideration and decision. Such reference and delegation was made in all likelihood because the undersigned representative of respondent probably worked the closest with governmental agencies on behalf of respondent. Undersigned representative was advised that the decision was the representative's to make. At some point in 1989, any request or action by respondent corporation with respect to contributions to candidates for political office were wholly channeled to or through the undersigned, and decisions made only by the undersigned, a process which continues to the present time.

Regretably, your representative is unable to clearly recall the process by which contributions from January 1, 1986 through the aforementioned point in 1988 were made, except that there were likely some contributions made by respondent as a result of a suggestion made by your representative.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

Objection is made to the phrase "source of funds" as being vague and ambiguous. Subject to such objection and without waiver thereof, to the extent the question is understood by respondent, the contributions were derived from the income of respondent, which is a Hawaii corporation, and which

9404357308 1

income was derived from its profit making activities in the United States.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

To the extent respondent understands the term "policitcal action committee" respondent does not maintain such committee.

However, see the response to interrogatory question number 5, above.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currrently operated, and identify those persons who determine under which circumstances funds are available for the pool.

Objection is made to the term "pool of funds" as being broad and ambiguous. To the extent that term is understood, respondent advises that it does not maintain such "pool of funds".

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

In addition to attorneys assisting in the preparation of these responses, the responses were provided by, or prepared under the direction of Henry Sheldon.

Associated with respondent since October, 1985.

October 1985 to the spring or early summer of 1987: Construction Manager.

Spring or early summer of 1987 to the spring or early summer of 1988: Vice President of respondent.

Spring or early summer of 1989: Executive Vice President of respondent.

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Copies of documents requested by the Commission are attached.

Haseko (Hawaii), Inc.,
a Hawaii corporation

(seal)

By _____
Henry K. Sheldon
Its Executive Vice President

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this 25th day of June, 1990, before me appeared HENRY K. SHELDON, to me personally known, who, being by me duly sworn, did say that he is the Executive Vice President, respectively, of HASEKO (HAWAII), INC., a Hawaii corporation, and that said instrument was signed and sealed in behalf of said corporation and the said officer acknowledged said instrument to be the free act and deed of said corporation.

_____
Notary Public, State of Hawaii
My Commission Expires: 9/25/92

L.S.

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Exhibit "A"
To Answers to Interrogatories of the Federal
Electon Commission Attached to Commission's Letter
dated May 21, 1990

The Annual Corporate Exhibits of Respondent for the years 1986 through 1989 filed with the Department of Commerce and Consumer Affairs, STate of Hawaii are attached, listing the officers and directors as of December 31 of each such year.

Additionally, since January 1, 1990, the officers and directors are the same as indicated in the Annual Corporate Exhibit for 1989 with the addition of director Hiroaki Higashi, whose business address is c/o Haseko (Hawaii), Inc., Suite 820 Haseko Center, 820 Mililani Street, Honolulu, Hawaii 96813.

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DOMESTIC PROFIT CORPORATION

STATE OF HAWAII

MAKE REMITTANCE PAYABLE TO: DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
FILING FEE $10.00

BUSINESS REGISTRATION DIVISION
1010 Richards Street
Mailing Address: P.O. Box 40, Honolulu, HI 96810

ORIGINAL-RETURN BY MARCH 31
PENALTY FOR LATE FILING
YOUR CANCELLED CHECK IS YOUR RECEIPT

ANNUAL CORPORATION EXHIBIT

FOR THE YEAR ENDED DECEMBER 31, 1986 (YEAR)

CORPORATE NAME AND MAILING ADDRESS
HASEGAWA KOMUTEN (HAWAII), INC.
STE 820, 820 MILILANI ST.
HONOLULU HAWAII 96813

IF THE MAILING ADDRESS HAS CHANGED, LINE OUT OLD ADDRESS AND TYPE OR PRINT NEW ADDRESS BELOW (INCLUDING ZIP CODE):

(READ INSTRUCTIONS ON REVERSE SIDE)

Authorized Capital				Paid-in Capital (CANNOT EXCEED AUTHORIZED CAPITAL)		
Class (Common, Etc.)	Shares	Par Share	Par Total	Class (Common, Etc.)	Shares	Amount
Common	1,000,000	$ 10.00	$ 10,000,000.00	Common	1,000,000	$ 10,000,000.00
		$	$			$
		$	$			$

(If no par share, read instruction)
NUMBER OF SHARES HELD IN TREASURY, IF ANY None (not shares outstanding held by shareholders)
(IF MORE THAN ONE CLASS, STATE SEPARATELY BY CLASS)

OFFICERS: (JUST ALL OFFICERS, EVERY CORPORATION, INCLUDING PROFESSIONAL CORPORATIONS, MUST HAVE A MINIMUM OF TWO PERSONS AS OFFICERS.)

OFFICE HELD	NAME IN FULL	RESIDENCE ADDRESS (Do not list business address.) (INCLUDE NUMBER & STREET, APT., NO., CITY, STATE & ZIP CODE)	
President	Kohei Goda	2-13-15 Oyamadai, Setagaya-ku	Tokyo, Japan
Sr. Exec. V.P.	Katsumi Kiuchi	44 Lynwood Road	Scarsdale, NY 10583
Exec. V.P.	Katsuo Shimizu	4340 Pahoa Avenue #6A	Honolulu, HI 96816
Vice Pres.	Toru Nagayama	2004 Hoefley Lane	Fort Lee, NJ 07024
Sec./Treas.	Azuma Niimi	5-18-3 Fuchinobe Honcho, Sagamihara-shi	Kanagawa, Japan

PROFESSIONAL CORPORATIONS: SEE INSTRUCTIONS ON BACK OF THIS FORM.

DIRECTORS: (MAY STATE SAME AS ABOVE IF APPLICABLE. AT LEAST ONE MUST BE A HAWAII RESIDENT.) RESIDENCE ADDRESS (DO NOT LIST BUSINESS ADDRESS) (INCLUDE NO. & STREET, APT. NO., CITY, STATE & ZIP CODE)

Above named officers except:

Toru Nagayama	2004 Hoefley Lane	Fort Lee, NJ 07024

AND:

Yoshimi Mizukami	1-34-1-401 Ebisunishi, Shibuya-ku	Tokyo, Japan
Seiji Kurasawa	624 Izumi Komae-shi	Tokyo, Japan
Atsuo Nomura	5-3-44-101 Minami-Azabu, Minato-ku	Tokyo, Japan

1 SPECIFIC NATURE OF CORPORATE BUSINESS Real Estate Development
(IF NOT SPECIFIC, EXHIBIT WILL BE REJECTED. IF INACTIVE DURING PERIOD, STATE INACTIVE.)

DECLARATION

I DECLARE UNDER THE PENALTIES SET FORTH IN SECTION 415-94 HAWAII REVISED STATUTES, THAT THIS EXHIBIT HAS BEEN EXAMINED BY ME, AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IS A TRUE, CORRECT AND COMPLETE EXHIBIT, MADE IN GOOD FAITH, FOR THE PERIOD STATED.

DATE March 20, 1987 — (Signature of authorized corporate officer) (If attorney-in-fact signs, attach power of attorney.) — Executive Vice President (office held)

FILE NO. 25 072 01

Exhibit "A"
Page 2

015-0915-10
015-0915-17

DOMESTIC PROFIT CORPORATION **STATE OF HAWAII**

MAKE REMITTANCE PAYABLE TO: DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
FILING FEE: $15.00

BUSINESS REGISTRATION DIVISION
1010 Richards Street
Mailing Address: P.O. Box 40, Honolulu, HI. 96810

ORIGINAL-RETURN BY MARCH 31
PENALTY FOR LATE FILING
YOUR CANCELLED CHECK IS YOUR RECEIPT

DOMESTIC PROFIT CORPORATION ANNUAL REPORT FOR THE YEAR ENDED DECEMBER 31, 1987
(YEAR)

CORPORATE NAME AND MAILING ADDRESS:

HASEGAWA KOMUTEN (HAWAII), INC.
STE 820, 820 MILILANI ST.
HONOLULU HAWAII 96813

IF THE ABOVE MAILING ADDRESS HAS CHANGED, LINE OUT ADDRESS AND TYPE OR PRINT THE NEW ADDRESS ON THE LINE BELOW. GIVE NUMBER, STREET, CITY, STATE, AND ZIP CODE:

AUTHORIZED CAPITAL		PAID-IN CAPITAL	
CLASS / SERIES	NUMBER	CLASS / SERIES	NUMBER
Common	1,000,000	Common	1,000,000

OFFICERS: (LIST ALL OFFICERS. EVERY CORPORATION, INCLUDING PROFESSIONAL CORPORATIONS, MUST HAVE A MINIMUM OF TWO INDIVIDUALS AS OFFICERS.

OFFICE HELD	NAME IN FULL	RESIDENCE ADDRESS: (DO NOT LIST BUSINESS ADDRESS) (INCLUDE NUMBER & STREET, APT. NO., CITY, STATE & ZIP CODE)	
President	Katsumi Kiuchi	44 Lynwood Road	Scarsdale, NY 10583
Exec. V.P.	Katsuo Shimizu	4929 Kolohala Street	Honolulu, HI 96816
Vice President	Henry Sheldon	1521 Alexander St., #902	Honolulu, HI 96822
Vice President	Nobuyoshi Tsukuda	300 Wai Nani Way #2416	Honolulu, HI 96815
Sec./Treas.	Makoto Sakaguchi	175-1-615 Shimo-Sakunobe	
		Takatsu-Ku, Kawasaki-Shi	Kanagawa-Ken, Japan 213

DIRECTORS: (MAY STATE AS ABOVE IF APPLICABLE. AT LEAST ONE MEMBER MUST BE A RESIDENT OF HAWAII)

	RESIDENCE ADDRESS: (DO NOT LIST BUSINESS ADDRESS) (INCLUDE NUMBER & STREET, APT. NO., CITY, STATE & ZIP CODE)	
Kohei Goda	2-13-15 Oyamadai, Setagaya-Ku	Tokyo Japan
Katsumi Kiuchi	44 Lynwood Road	Scarsdale, NY 10583
Katsuo Shimizu	4929 Kolohala Street	Honolulu, HI 96816
Atsuo Nomura	5-3-44-101 Minami-Azabu, Minato-Ku Tokyo, Japan	
Yoshimi Mizukami	1-34-1-401 Ebisunishi, Shibuya-Ku Tokyo, Japan	
Toru Hashimoto	3-27-10-104 Yoga, Setagaya-Ku	Tokyo, Japan 158

TURE OF BUSINESS: Real Estate Development
(IF INACTIVE DURING THE PERIOD, STATE INACTIVE)

CERTIFICATION

ERTIFY UNDER THE PENALTIES OF SECTION 415-136, HAWAII REVISED STATUTES, THAT I HAVE READ THE ABOVE STATEMENTS AND THAT THE SAME TRUE AND CORRECT FOR THE PERIOD STATED.

DATE March 29, 1988 (SIGNATURE OF AUTHORIZED OFFICER) Executive Vice Pres. (OFFICE HELD)

(SEE REVERSE SIDE FOR INSTRUCTIONS)

FILE NO. 25 072 01

Exhibit "A" Page 3

015-0915-10
015-0915-17

* FILE THIS ORIGINAL COPY. PHOTO COPY WILL NOT BE ACCEPTED

DOMESTIC PROFIT CORPORATION

STATE OF HAWAII

MAKE REMITTANCE PAYABLE TO: DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
FILING FEE: $15.00

BUSINESS REGISTRATION DIVISION
1010 Richards Street
Mailing Address: P.O. Box 40, Honolulu, HI. 96810

ORIGINAL-RETURN BY MARCH 31
PENALTY FOR LATE FILING
YOUR CANCELLED CHECK IS YOUR RECEIPT

DOMESTIC PROFIT CORPORATION ANNUAL REPORT FOR THE YEAR ENDED DECEMBER 31, 1988 (YEAR)

CORPORATE NAME AND MAILING ADDRESS:

HASEKO (HAWAII), INC.
STE 820, 820 MILILANI ST.
HONOLULU HAWAII 96813

IF THE ABOVE MAILING ADDRESS HAS CHANGED, LINE OUT ADDRESS AND TYPE OR PRINT THE NEW ADDRESS ON THE LINE BELOW. GIVE NUMBER, STREET, CITY, STATE, AND ZIP CODE:

AUTHORIZED CAPITAL		PAID-IN CAPITAL	
CLASS / SERIES	NUMBER	CLASS / SERIES	NUMBER
Common	1,000,000	Common	1,000,000

OFFICERS: (LIST ALL OFFICERS. EVERY CORPORATION INCLUDING PROFESSIONAL CORPORATIONS, MUST HAVE A MINIMUM OF TWO INDIVIDUALS AS OFFICERS)

OFFICE HELD	NAME IN FULL	RESIDENCE ADDRESS: (DO NOT LIST BUSINESS ADDRESS) (INCLUDE NUMBER & STREET, APT. NO., CITY, STATE & ZIP CODE)	
President	Katsumi Kiuchi	21 Greenville Road	Scarsdale, NY 10583
Sr. Exec. V. P.	Katsuo Shimizu	4929 Kolohala Street	Honolulu, Hawaii 96816
Exec. V. P.	Henry K. Sheldon	5090 Likini St., #1404	Honolulu, Hawaii 96818
Vice President	Nobuyoshi Tsukuda	300 Wai Nani Way, #2416	Honolulu, Hawaii 96815
Vice President	Francis E. Tanaka	432 Kekauluohi Street	Honolulu, Hawaii 96825
Sec./Treas.	Makoto Sakaguchi	175-1-615 Shimo-Sakunobe Takatsu-Ku, Kawasaki-Shi	Kanagawa-Ken, Japan 213

DIRECTORS: (MAY STATE AS ABOVE IF APPLICABLE. AT LEAST ONE MEMBER MUST BE A RESIDENT OF HAWAII)

	RESIDENCE ADDRESS: (DO NOT LIST BUSINESS ADDRESS) (INCLUDE NUMBER & STREET, APT. NO., CITY, STATE & ZIP CODE)	
Kohei Goda	2-23-15 Oyamadai, Setagaya-Ku	Tokyo, Japan 158
Katsumi Kiuchi	21 Greenville Road	Scarsdale, NY 10583
Katsuo Shimizu	4929 Kolohala Street	Honolulu, Hawaii 96816
Atsuo Nomura	5-3-44-101 Minami-Azabu, Minato-Ku	Tokyo, Japan 106
Yoshimi Mizukami	1-34-1-401 Ebisunishi, Shibuya-Ku	Tokyo, Japan 150
Toru Hashimoto	3-27-10-104 Yoga, Setagaya-Ku	Tokyo, Japan 158

NATURE OF BUSINESS: Real Estate Development
(IF INACTIVE DURING THE PERIOD, STATE INACTIVE)

CERTIFICATION

(IF A PROFESSIONAL CORPORATION, BY MY SIGNATURE BELOW, I CERTIFY THAT ALL OF THE SHAREHOLDERS, ONE-HALF OF THE DIRECTORS AND ALL OF THE OFFICERS OTHER THAN THE SECRETARY AND TREASURER OF THIS PROFESSIONAL CORPORATION ARE QUALIFIED (LICENSED) PERSONS.)

I CERTIFY UNDER THE PENALTIES OF SECTION 415-136, HAWAII REVISED STATUTES, THAT I HAVE READ THE ABOVE STATEMENTS AND THAT THE SAME ARE TRUE AND CORRECT FOR THE PERIOD STATED.

DATE March 14, 1989

(SIGNATURE OF AUTHORIZED OFFICER)

Senior Executive Vice President
(OFFICE HELD)

(SEE REVERSE SIDE FOR INSTRUCTIONS)

FILE NO. 25 072 01

Exhibit "A"
Page 4

015-0915-10
015-0915-17

DOMESTIC PROFIT CORPORATION

MAKE REMITTANCE PAYABLE TO:
FILING FEE: $15.00

STATE OF HAWAII

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
BUSINESS REGISTRATION DIVISION
1010 Richards Street
Mailing Address: P.O. Box 40, Honolulu, HI. 96810

ORIGINAL-RETURN BY MARCH 31
PENALTY FOR LATE FILING

Your cancelled check is your receipt

DOMESTIC PROFIT CORPORATION ANNUAL REPORT FOR THE YEAR ENDED DECEMBER 31, 1989

CORPORATE NAME AND MAILING ADDRESS:

HASEKO (HAWAII), INC.
~~STE 820, 820 MILILANI ST.~~
HONOLULU , HI 96813

If the above mailing address has changed, line out address and type or print the new address on the following line. Give Number, Street, City, State, and Zip Code: 820 Mililani Street, Suite 820

1. AUTHORIZED CAPITAL

CLASS/SERIES	NUMBER
COMMON	1,000,000

PAID-IN CAPITAL (NUMBER OF SHARES ISSUED)

CLASS/SERIES	NUMBER
COMMON	1,000,000

To Correct the above capital(s), line out and print the correct class/series and numbers on the right.

2. NATURE OF BUSINESS: REAL ESTATE DEVELOPMENT
(To correct, line out and print corrections below. If inactive during the period, state INACTIVE.)

3. OFFICERS/DIRECTORS: (List all officers and directors. Every corporation must have a minimum of two individuals as officers. At least one director must be a resident of Hawaii. To correct, line out and print corrections on the right. See instructions on back of form.)

OFFICE HELD/ DIRECTOR CODE	NAME IN FULL	RESIDENCE ADDRESS (DO NOT LIST BUSINESS ADDRESS) (INCLUDE NUMBER & STREET, APT. NO., CITY, STATE & ZIP CODE)	
*P/D	KIUCHI,KATSUMI	21 GREENVILLE RD	SCARSDALE NY 10583
*EV/D	SHIMIZU,KATSUO	4929 KOLOHALA ST	HON HI 96816
*EV	SHELDON,HENRY K	~~6000 LIKINI ST #1404~~	HON HI ~~96818~~ 6223 KAWAIHAE PL. HON HI 96825
~~*V~~	~~TSUKUDA,NOBUYOSHI~~	~~900 WAI NANI WAY #24~~	~~HON HI 96815~~
*V	TANAKA,FRANCIS E	432 KEKAULUOHI ST	HON HI 96825
*S/T	SAKAGUCHI,MAKOTO	~~175-1-615 SHIMO-SAKU (SEE RPT)~~	
*D	GODA,KOHEI	~~2-23-15 OYAMADAI SET TOKYO JA 158~~	
*D	NOMURA,ATSUO	~~5-3-44-101 MINAMI AZ MINATO-KU TOKYO JA 1~~	
*D	MIZUKAMI,YOSHIMI	~~1-34-1-401 EBISUNISH SHIBUYA-KU TOKYO JA~~	
*D	HASHIMOTO,TORU	~~3-27-10-104 YOGA SETAGAYA-KU TOKYO JA~~	

SEE BELOW

*S/T	SAKAGUCHI, MAKOTO	175-1-615 Shimo-Sakunobe Takatsu-Ku, Kawasaki-Shi	Kanagawa-Ken, Japan 213
*D	GODA, KOHEI	2-23-15 Oyamadai, Setagaya-Ku	Tokyo, Japan 158
*D	NOMURA, ATSUO	5-3-44-101 Minami-Azabu, Minato-Ku	Tokyo, Japan 106
*D	MIZUKAMI, YOSHIMI	1-34-1-401-Ebisunishi, Shibuya-Ku	Tokyo, Japan 150
*D	HASHIMOTO, TORU	3-27-10-104 Yoga, Setagaya-Ku	Tokyo, Japan 158

CERTIFICATION

I certify under the penalties of Section 415-136, Hawaii Revised Statutes, that I have read the above and:

CHECK ONLY ONE OF THE FOLLOWING STATEMENTS

[ ] The above information is true and correct and no changes are necessary.
[X] The above information is true and correct with changes so noted.

DATE: March 23, 1990

SIGNATURE OF AUTHORIZED OFFICER,
(If Attorney-in-fact signs, attach power of attorney)

Executive Vice President
(OFFICE HELD)

FILE NO. 0025072D1 (File this original copy. Photo copy will not be accepted. Keep photo copy for your records.)
Rev. 12/89 (see reverse side for instructions)

015-0915-10
015-0915-17

Exhibit "A"
Page 5

Exhibit "B"
To Answers to Interrogatories of the Federal Election Commission Attached to Commission's Letter Dated May 21, 1990

A list of contributions and refunds made by or received by respondent from 1986 is attached hereto.

9 4 0 4 3 5 7 3 0 8 9

HASEKO (HAWAII), INC.

Check Date	Recipient	Amt Paid (Refund)
1/03/86	Frank Fasi - Refund for 1985	(250.00)
4/14/86	Duke Kawasaki	100.00
5/30/86	John Waihee - (T-Shirts)	1,000.00
6/12/86	Kevin Kuroda	2,000.00
7/09/86	Andy Anderson	200.00
9/11/86	Ronald Kouchi	1,000.00
9/11/86	Jesse Fukushima	500.00
9/11/86	Duke Kawasaki	200.00
9/11/86	Maxine Correa	500.00
10/09/86	Dennis O'Connor	100.00
	TOTAL FOR 1986	5,350.00
2/06/87	Leigh-Wai Doo	100.00
2/25/87	Ezra R. Kanoho	500.00
4/23/87	Dennis O'Connor	200.00
6/01/87	Tony T. Kunimura	2,000.00
7/31/87	Frank Fasi	250.00
7/01/87	Frank Fasi	250.00
9/25/87	Takashi Domingo	250.00
12/14/87	Dante Carpenter	250.00
	TOTAL FOR 1987	3,800.00
1/14/88	Ben Cayetano	1,000.00
2/09/88	Dante Carpenter	200.00
3/04/88	Ezra R. Kanoho	500.00
3/28/88	Leigh-Wai Doo (For Congress)	1,000.00 (1)
4/07/88	Stephen Yamashiro	500.00
4/14/88	Milton Holt	300.00
4/15/88	Howard S. Kihune	500.00
4/15/88	Frank De Luz	200.00
5/26/88	Marilyn Bornhorst	200.00
6/03/88	Neil Abercrombie	100.00
6/22/88	Lorraine Jichaku-Inouye	1,000.00
7/05/88	Randy Iwase	500.00
8/05/88	Ezra R. Kanoho	500.00
8/05/88	Neil Abercrombie	250.00
7/14/88	Doo for Congress Committee - Refund	(1,000.00)(1)
8/15/88	Harry Ruddle	500.00
9/30/88	Takashi Domingo	250.00
9/30/88	Harry Ruddle	500.00
10/12/88	Marilyn Bornhorst	250.00
10/21/88	Ezra R. Kanoho	300.00
10/21/88	Elroy Osorio	60.00
	TOTAL FOR 1988	7,610.00

2 4 0 4 3 5 7 3 0 9 0

HASEKO (HAWAII), INC.

Check Date	Recipient	Amt Paid (Refund)
1/20/89	Donna Mercado Kim	200.00
	TOTAL FOR 1989	200.00
1/05/90	Henry Peters	500.00
1/23/90	Rene Mansho	500.00
1/31/90	Leigh-Wai Doo	50.00
2/09/90	Dennis Nakasato	125.00
2/26/90	Paul T. Oshiro	250.00
2/28/90	John Desoto	250.00
4/02/90	Annelle Amaral	400.00
4/02/90	Marshall Ige	100.00
4/02/90	Tom Okamura	250.00
4/03/90	Gary Gill	50.00
5/18/90	Neil Abercrombie	50.00
5/29/90	Harry Ruddle	1,000.00
5/31/90	Ben Cayetano	500.00
	TOTAL THRU MAY 31, 1990	4,025.00
	GRAND TOTAL FOR HASEKO (HAWAII), INC.	20,985.00

2404357309 1

WE HAVE NOT RECEIVED CONTRIBUTIONS NOR MADE EXPENDITURES DURING THIS REPORTING PERIOD

Committee/Party Name: NASSIGIAN KOMITEH (NAKOMITI), INC.

Address: 820 Williams St., Suite 820

City: Honolulu Zip: 96813 Phone: 536-2111

FOR THE REPORTING PERIOD OF 11/1/86 thru 12/31/86

Check Appropriate Box

- ☐ PRE PRIMARY REPORT
- ☐ POST PRIMARY REPORT
- ☒ SUPPLEMENTAL REPORT
- ☐ PRE GENERAL REPORT
- ☐ POST GENERAL REPORT
- ☐ Other

I CERTIFY THE ABOVE STATEMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE

Treasurer Signature Date

FOLD HERE

WE HAVE NOT RECEIVED CONTRIBUTIONS NOR MADE EXPENDITURES DURING THIS REPORTING PERIOD

Committee/Party Name: NASSIGIAN KOMITEH (NAKOMITI), INC.

Address: 820 Williams St., Suite 820

City: Honolulu Zip: 96813 Phone: 536-2111

FOR THE REPORTING PERIOD OF 11/1/86 thru 12/31/86

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- ☐ POST PRIMARY REPORT
- ☒ SUPPLEMENTAL REPORT
- ☐ PRE GENERAL REPORT
- ☐ POST GENERAL REPORT
- ☐ Other

I CERTIFY THE ABOVE STATEMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE

Treasurer Signature Date

FOLD HERE

WE HAVE NOT RECEIVED CONTRIBUTIONS NOR MADE EXPENDITURES DURING THIS REPORTING PERIOD

Committee/Party Name: NASSIGIAN KOMITEH (NAKOMITI), INC.

Address: 820 Williams St., Suite 820

City: Honolulu Zip: 96813 Phone: 536-2111

FOR THE REPORTING PERIOD OF 11/1/86 thru 12/31/86

Check Appropriate Box

- ☐ PRE PRIMARY REPORT
- ☐ POST PRIMARY REPORT
- ☒ SUPPLEMENTAL REPORT
- ☐ PRE GENERAL REPORT
- ☐ POST GENERAL REPORT
- ☐ Other

I CERTIFY THE ABOVE STATEMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE

Treasurer Signature Date

HK-0001

9404357309 2

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

ELECTION YEAR 1986

ORGANIZATIONAL REPORT
FOR COMMITTEES OTHER THAN CANDIDATE'S COMMITTEE

PLEASE TYPE OR PRINT CLEARLY WITH BLACK INK

COMMITTEE NAME Hasegawa Komuten (Hawaii), Inc.

ADDRESS 820 Mililani Street, Suite 820

CITY STATE Honolulu, Hawaii 96813

None
NAME OF SPONSORING ORGANIZATION IN COMMITTEE

IMPORTANT: All notices and commission correspondence will be sent to the above address. If you move or change address notify the commission in writing immediately.

THIS REPORT IS FILED FOR THE FOLLOWING PURPOSE(S) (Check Appropriate Boxes)

- [x] Registration of New Committee
- [ ] Continuing Committee Re-registering for a New Election Period
- [ ] Receipt of contributions aggregating more than $100
- [ ] Amended report
- [ ] A list of donors who have contributed an aggregate amount of more than $100 each is attached to this report (Disclosure Report)

BALLOT ISSUE OR QUESTION SUPPORTING OR OPPOSING

CANDIDATE'S NAME
[ ] Single Candidate
[ ] Ballot Issue

OFFICERS OF COMMITTEE OR PARTY

Committee Chairman Katsuo Shimizu
Address 820 Mililani Street, Suite 820
City, State Honolulu, Hawaii 96813
Telephone 536-3771 (Bus) 734-4823 (Res)

Treasurer Kenji Tuse
Address 820 Mililani Street, Suite 820
City, State Honolulu, Hawaii 96813
Telephone 536-3771 (Bus) 926-5742 (Res)

Deputy Chairman Shigeo Hone
Address 820 Mililani Street, Suite 820
City, State Honolulu, Hawaii 96813
Telephone 536-3771 (Bus) 924-8547 (Res)

Deputy Treasurer
Address
City, State
Telephone (Bus) (Res)

COMMITTEE DEPOSITORIES (Financial Institutions, Safe-deposit Boxes, etc.)

Depository Name	Branch	Account (Box) Number	CHECKING	SAVINGS	SAFE DEP. BOX	OTHER
First Hawaiian Bank	Honolulu	01-110217	X			
First Hawaiian Bank	Honolulu	01-174975	X			

Certification: I hereby certify that the above and all attached schedules are true, correct and complete to the best of my knowledge.

Shigeo Hone — General Manager/Hotel Division — 11/7/86
Authorized Signature — Title — Date

HE 0002

2404357309 3

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

ELECTION YEAR 1986

DISCLOSURE REPORT
FOR COMMITTEES OTHER THAN CANDIDATES COMMITTEE

This Report Covers The Period From 1/1/86 (Date) thru 11/4/86 (Date)

SECTION A

NAME AND MAILING ADDRESS OF COMMITTEE OR PARTY
(Must be same as appearing on organizational report)

NAME Hasegawa Komuten (Hawaii), Inc.

ADDRESS 820 Mililani Street, Suite 820

CITY STATE Honolulu, Hawaii 96813

BUS 536-1771 (Treasurer's Telephone) RES 926-5742

THIS REPORT IS A (Check Appropriate Boxes)

- ☐ Pre Primary Report
- ☐ Pre General Report
- ☐ Post Primary Report
- ☐ Post General Report
- ☐ Supplemental Report
- ☐ Amended Report
- ☐ Final Termination Report (Balance Must be Reduced to Zero)
- ☒ Other Disclosure Report 1/1/86 to 11/4/86

SECTION B SUMMARY OF RECEIPTS AND EXPENDITURES
(Fill Out Sections C, D & E Before Section B)

RECEIPTS	THIS PERIOD	EXPENDITURES	THIS PERIOD
1 Cash Receipts of $100 or Less		8 Total Expenditures to Participants (Sec. E Line 7)	$6,600.00
2 Non Monetary Receipts of $100 or Less		9 Total Cumulative Expenditures From Prior Period (Sec. B Line 10 of Prior Report)	
3 Receipts Aggregating Over $100 (Sec. C Line 13)		10 Total Cumulative Expenditures to Date (Line 8 Plus Line 9)	$6,600.00
4 Other Receipts (Sec. D Line 10)			
5 Total Receipts This Period (Add Lines 1 Thru 4)		11 SURPLUS of Line 7 Minus Line 10 in Previous	
6 Total Cumulative Receipts From Prior Report (Sec. B Line 7 of Prior Report)		12 DEFICIT of Line 7 Minus Line 10 in Negative	
7 Total Cumulative Receipts to Date (Line 5 Plus 6)		CASH BALANCE AS OF	$

SECTION C SOURCE OF AGGREGATE RECEIPTS OVER $100

DATE RECEIVED	NAME AND ADDRESS OF DONOR OR SOURCE OF RECEIPT	RECEIPTS OF INDIVIDUAL	AMOUNT OF THIS CASH RECEIPT	VALUE OF THIS NON-MONETARY RECEIPT	TOTAL RECEIPTS

13 TOTAL AGGREGATE RECEIPTS OVER $100 THIS PAGE

14 TOTAL AGGREGATE RECEIPTS OVER $100 FROM SUPPORTING SCHEDULE

15 TOTAL AGGREGATE RECEIPTS OVER $100 THIS PERIOD (Line 13 plus Line 14)

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SECTION D OTHER RECEIPTS (Interest, Reimbursements, Cancelled Checks, etc.)

DATE	SOURCE	ADDRESS	DESCRIPTION	AMOUNT

16. TOTAL OTHER RECEIPTS THIS PERIOD ..... $ _____

SECTION E CONTRIBUTIONS MADE TO CANDIDATES AND OTHER EXPENDITURES

CONTRIBUTION or INVOICE DATE	RECIPIENT'S NAME AND ADDRESS or VENDOR'S NAME AND ADDRESS	PURPOSE AND DESCRIPTION	AMOUNT	✓ if CONTRIBUTION TO CANDIDATE
	HASEGAWA KOMUTEN (HAWAII), INC.			
04/14/86	Friends of Duke Kawasaki 1240 Waimanu Street, Suite C Honolulu, Hawaii 96814	Donation	$ 100.00	X
06/12/86	Friends of Kevin KK Kuroda P. O. Box 805 Pearl City, Hawaii 96782	Donation	2,000.00	X
07/09/86	Andy Anderson for Governor c/o 2005 Kalia Road Honolulu, Hawaii 96815	Donation	200.00	X
09/11/86	Friends of Ronald Kouchi P. O. Box 593 Honolulu, Hawaii 96796	Donation	1,000.00	X
09/11/86	Friends of Maxine Correa P. O. Box 624 Lawai, Hawaii 96765	Donation	500.00	X
09/11/86	Friends of Duke Kawasaki 1240 Waimanu Street, Suite C Honolulu, Hawaii 96814	Donation	200.00	X
09/11/86	Friends of Jesse Fukushima P. O. Box 282 Kapaa, Kauai, Hawaii 96746	Donation	500.00	X
10/09/86	Friends of Dennis O'Connor P. O. Box 56 Honolulu, Hawaii 96810	Donation	100.00	X
GRAHAM BEACH PARTNERS 02/28/86	Friends of Tony Kunimura P. O. Box 558 Kapaa, Kauai, Hawaii 96746	Donation	2,000.00	X

17. TOTAL CONTRIBUTIONS MADE TO CANDIDATES AND INVOICES PAID THIS PAGE $6,600.00
18. TOTAL CONTRIBUTIONS MADE TO CANDIDATES AND INVOICES PAID FROM SUPPORTING SCHEDULE ..... -0-
19. TOTAL CONTRIBUTIONS MADE TO CANDIDATES AND INVOICES PAID THIS PERIOD (Line 17 plus Line 18) $6,600.00

Certification: I hereby certify that the above and all attached Schedules are complete, correct and true statements to the best of my knowledge.

Treasurer's Signature — Date 11/7/86

Hasegawa Komuten (Hawaii), Inc. is the general partner of Graham Beach Partners. The contributions to Friends of Tony Kunimura was written on a check from Graham Beach Partners account (No. 01-174975)

HK 0004

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STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

ELECTION YEAR
1987

DISCLOSURE REPORT
FOR COMMITTEES OTHER THAN CANDIDATES COMMITTEE

This Report Covers The Period From 1/1/87 (Date) thru 6/30/87 (Date)

SECTION A

NAME AND MAILING ADDRESS OF COMMITTEE OR PARTY
(Must be same as appearing on organizational report)

NAME HASEGAWA KOMUTEN (HAWAII), INC.
ADDRESS 820 Mililani Street, Suite 820
CITY STATE Honolulu, Hawaii 96813
BUS 536-3171 RES
Treasurer's Telephone

THIS REPORT IS A (Check Appropriate Box(es))

- ☐ Pre Primary Report
- ☐ Pre General Report
- ☐ Post Primary Report
- ☐ Post General Report
- ☐ Supplemental Report
- ☐ Amended Report
- ☐ Final Termination Report (Balance Must be Reduced to Zero)
- ☒ Other Disclosure Report

SECTION B SUMMARY OF RECEIPTS AND EXPENDITURES
(Fill Out Sections C, D & E Before Section B)

RECEIPTS	THIS PERIOD	EXPENDITURES	THIS PERIOD
1 Cash Receipts of $100 or Less		8 Total Expenditures in Reports Use Total Expenditures (Sec. E Line 4)	$3,800.00
2 Non Monetary Receipts of $100 or Less		9 Total Cumulative Expenditures From Prior Period (Sec. B Line 10 of Prior Report)	
3 Receipts Aggregating Over $100 (Sec. C Line 15)		10 Total Cumulative Expenditures to Date (Line 8 Plus Line 9)	$3,800.00
4 Other Receipts (Sec. D Line 16)			
5 Total Receipts This Period (Add Lines 1 Thru 4)		11 SURPLUS (If Line 7 Minus Line 10 is Positive)	
6 Total Cumulative Receipts From Prior Report (Sec. B Line 7 of Prior Report)		12 DEFICIT (If Line 7 Minus Line 10 is Negative)	
7 Total Cumulative Receipts to Date (Line 5 Plus 6)		CASH BALANCE AS OF _____ $	

SECTION C SOURCE OF AGGREGATE RECEIPTS OVER $100

DATE RECEIVED	NAME AND ADDRESS OF DONOR OR SOURCE OF RECEIPT	OCCUPATION OF INDIVIDUAL	AMOUNT OF THIS CASH RECEIPT	VALUE OF THIS NON-MONETARY RECEIPT	TOTAL RECEIPTS

13 TOTAL AGGREGATE RECEIPTS OVER $100 THIS PAGE _____
14 TOTAL AGGREGATE RECEIPTS OVER $100 FROM SUPPORTING SCHEDULE _____
15 TOTAL AGGREGATE RECEIPTS OVER $100 THIS PERIOD (Line 13 plus Line 14) _____

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SECTION D OTHER RECEIPTS (Interest, Reimbursements, Cancelled Checks, etc.)

DATE	SOURCE	ADDRESS	DESCRIPTION	AMOUNT

16. TOTAL OTHER RECEIPTS THIS PERIOD $ ____

SECTION E CONTRIBUTIONS MADE TO CANDIDATES AND OTHER EXPENDITURES

CONTRIBUTION OR INVOICE DATE	RECIPIENT'S NAME AND ADDRESS OR LENDOR'S NAME AND ADDRESS	PURPOSE AND DESCRIPTION	AMOUNT	% OF CONTRIBUTION TO CANDIDATE
HASEGAWA KOMUTEN (HAWAII), INC.				
2/06/87	The Don Kokua Committee c/o 3738 Pukalani Place Honolulu, Hawaii 96816	Donation	$ 100.00	X
2/25/87	Friends of Ezra H. Kanoho 2755 Kapa Street Lihue, Kauai, Hawaii 96766	Donation	500.00	X
4/23/87	Friends of Dennis O'Connor P. O. Box 56 Honolulu, Hawaii 96810	Donation	200.00	X
6/01/87	Friends of Tony T. Kunimura c/o Kauai Resort Hotel 359-20 Kuhio Highway Kapaa, Hawaii 96746	Donation	2,000.00	X
CRAIGAN BEACH PARTNERS				
6/01/87	Friends of Tony T. Kunimura c/o Kauai Resort Hotel 359-20 Kuhio Highway Kapaa, Hawaii 96746	Donation	1,000.00	X

17. TOTAL CONTRIBUTIONS MADE TO CANDIDATES AND INVOICES PAID THIS PAGE $3,800.00
18. TOTAL CONTRIBUTIONS MADE TO CANDIDATES AND INVOICES PAID FROM SUPPORTING SCHEDULE ..... $
19. TOTAL CONTRIBUTIONS MADE TO CANDIDATES AND INVOICES PAID THIS PERIOD (Line 17 plus Line 18) $3,800.00

Certification: I hereby certify that the above and all attached Schedules are complete, correct and true statements to the best of my knowledge

Treasurer's Signature 7/22/87 Date

[illegible]

HASEGAWA KOMUTEN (HAWAII), INC.
820 Mililani Street, Suite 820, Honolulu, Hawaii 96813
Telephone (808) 536-3771 - Telex Hasecko 723-8715

January 27, 1988

Campaign Spending Commission
335 Merchant Street, Room 215
Honolulu, Hawaii 96813

Re: Election Year 1988
Political Contributions

Dear Sir or Madam:

For your information, Hasegawa Komuten (Hawaii), Inc. has made the following political contributions for the period from July 1, 1987 to December 31, 1987:

7/01/87	Friends of Frank Fasi	$ 250.00
7/31/87	Friends of Frank Fasi	250.00
9/25/87	Friends of Takashi Domingo	250.00
12/04/87	Friends of Carpenter	250.00
	TOTAL	$1,000.00

Very truly yours,

HASEGAWA KOMUTEN (HAWAII), INC.

Kenji Yuen
Finance Manager

HL0007

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HASEGAWA KOMUTEN (HAWAII), INC.
820 Mililani Street, Suite 820, Honolulu, Hawaii 96813
Telephone (808) 536-3771 - Telex Hasako 723-8715

June 27, 1988

Campaign Spending Commission
335 Merchant Street, Room 215
Honolulu, Hawaii 96813

Re: Election Year 1988
Political Contributions

Dear Sir or Madam:

For your information, Hasegawa Komuten (Hawaii), Inc. and its subsidiaries has made the following political contributions for the period from January 1, 1988 to April 30, 1988:

HASEGAWA KOMUTEN (HAWAII), INC.

1/14/88	Friends of Ben Cayetano	$1,000.00
2/09/88	Friends of Dante Carpenter	200.00
3/14/88	Friends of Ezra Kanoho	500.00
3/28/88	Doo for Congress Committee	1,000.00
4/07/88	Friends of Stephen Yamashiro	500.00
4/14/88	Friends of Milton Holt	300.00
4/15/88	Friends of Frank De Luz	200.00
4/15/88	Friends of Howard Kihune	500.00

HASEKO REALTY, INC.

1/14/88	Friends of Ben Cayetano	$1,000.00

HASEKO ENGINEERING, INC.

2/10/88	Friends of David Kahanu	$ 250.00
3/04/88	Friends of Dennis O'Connor	250.00
	TOTAL	$5,200.00

Very truly yours,

HASEGAWA KOMUTEN (HAWAII), INC.

Kenji Yuse
Finance Manager

HK-0008

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HASEGAWA KOMUTEN (HAWAII), INC.
820 Mililani Street, Suite 820, Honolulu, Hawaii 96813
Telephone (808) 536-3771 - Telex Hawaii 723-8715

July 1, 1988

Campaign Spending Commission
335 Merchant Street, Room 215
Honolulu, Hawaii 96813

Re: Election Year 1988
Political Contributions

Dear Sir or Madam:

For your information, Hasegawa Komuten (Hawaii), Inc. has made the following political contributions for the period from May 1, 1988 to June 30, 1988:

5/26/88	Marilyn for Mayor	$ 200.00
6/03/88	Hui O Abercrombie	100.00
6/22/88	Friends of Lorraine Jichaku-Inouye	1,000.00
	TOTAL	$1,300.00

Very truly yours,

HASEGAWA KOMUTEN (HAWAII), INC.

Kenji Tuse
Finance Manager

2404357310 0

HASEGAWA KOMUTEN (HAWAII), INC.
820 Mililani Street, Suite 820, Honolulu, Hawaii 96813
Telephone (808) 536-3771 · Telex Hasuko 723-8715

September 1, 1988

Campaign Spending Commission
335 Merchant Street, Room 215
Honolulu, Hawaii 96813

Re: Election Year 1988
Political Contributions

Dear Sir or Madam:

For your information, Hasegawa Komuten (Hawaii), Inc. and its subsidiaries has made the following political contributions for the following periods:

HASEGAWA KOMUTEN (HAWAII), INC.			
7/05/88	Friends of Randy Iwase		$ 500.00
8/05/88	Hui O Abercrombie		250.00
8/05/88	Friends of Ezra Kanoho		500.00
	TOTAL - 7/1/88 - 9/2/88		$1,250.00
Refund from Doe for Congress Committee			(1,000.00)
HASEKO REALTY, INC.			
No contributions for 5/1/88 - 9/2/88			0.00
HASEKO ENGINEERING, INC.			
7/05/88	Friends of Dennis O'Connor		$ 400.00
8/26/88	Friends of Dennis O'Connor		100.00
8/26/88	Marilyn for Mayor		600.00
	TOTAL - 5/1/88 - 9/2/88		$1,100.00

Very truly yours,

HASEGAWA KOMUTEN (HAWAII), INC.

Kenji Yuge
Finance Manager

/ck

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HASEGAWA KOMUTEN (HAWAII), INC.
820 Mililani Street, Suite 820, Honolulu, Hawaii 96813
Telephone (808) 536-3771 - Telex Haseko 723-8715

October 25, 1988

HAND DELIVERED

Campaign Spending Commission
335 Merchant Street, Room 215
Honolulu, Hawaii 96813

Re: Election Year 1988
Political Contributions

Dear Sir or Madam:

For your information, Hasegawa Komuten (Hawaii), Inc. and its subsidiaries has made the following political contributions for the period from September 1, 1988 thru October 24, 1988.

HASEGAWA KOMUTEN (HAWAII), INC.:

6/15/88	Friends of Harry Ruddle [This was inadvertently missed on the last report.]	$ 500.00
9/30/88	Friends of Takashi Doningo	250.00
9/30/88	Friends of Harry Ruddle	500.00
10/12/88	Marilyn for Mayor Committee	250.00
10/21/88	Friends of Ezra Kanoho	300.00
10/21/88	Elroy Osorio - Representative	60.00
	TOTAL	$1,860.00

HASEKO REALTY, INC.:
No contributions. 0.00

HASEKO ENGINEERING, INC.:
No contributions. 0.00

Very truly yours,

HASEGAWA KOMUTEN (HAWAII), INC.

Kenji Yuse
Finance Manager

/cm

HK0011

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HASEKO

HASEKO (Hawaii), Inc.
820 Mililani Street Suite 820 Honolulu Hawaii 96813
Phone (808) 536-5771 Fax (808) 538-7654

July 31, 1989

HAND DELIVERED

Campaign Spending Commission
[illegible] Merchant Street, Room [illegible]
Honolulu, Hawaii 96813

Re: Political Contributions [illegible] 89 - [illegible] 30 89

Dear Sir or Madam:

For your information, HASEKO (Hawaii), Inc. and its subsidiaries has made the following political contributions for the period from January 1, 1989 thru June 30, 1989:

HASEKO (HAWAII), INC. (fka HASEGAWA KOMUTEN (HAWAII), INC.):

1/20/89	Friends of David Wilcox Kahanu	$250.00
1/20/89	Friends of Donna Mercado Kim	200.00
	TOTAL	$450.00

HASEKO REALTY, INC.:
No contributions. 0.00

HASEKO ENGINEERING, INC.:
No contributions. 0.00

Very truly yours,

HASEKO (Hawaii), Inc.

Henry K. Sheldon
Executive Vice President

/cm

HK0012

9404357310 3

The
INTERNATIONAL
COMMERCIAL
BANK OF
CHINA
NEW YORK AGENCY
40 WALL STREET • NEW YORK N Y 10005 U S A • TEL (212) 943-5000 • CABLE INTCOMBANK

June 26, 1990

VIA FEDERAL EXPRESS

Mr. Jonathan Bernstein
Assistant General Counsel
Federal Election Commission
Room 657
999 E. Street, N.W.
Washington, D.C. 20463

RE: MUR 2892
International Commercial Bank of China ("ICBC")

Dear Mr. Bernstein:

With reference to the letter dated May 21, 1990 from the Federal Election Commission to ICBC concerning the above-referenced matter, ICBC's response to the Interrogatories enclosed therewith is as follows:

1. ICBC has not donated any money to any state or local political committee in Hawaii.

2. ICBC does not have any subsidiaries located in Hawaii.

3. Attached is a list of ICBC's directors and ranking officers during the period from January 1986 to June 1990. ICBC's ranking officers and directors have assured ICBC that they have not donated any money in the name of ICBC to any Hawaii state or local committee.

Very truly yours,

Howard R. S. Ho
Senior Vice President
& General Manager

Attachment

9404357310 4

Title 職稱	Name In Chinese 中文姓名	Name In English 英文姓名	Period in Charge 擔任職務起迄日期	Remark 備註
董事長 Chairman	金克和	K. H. King	1986.1.1-1987.5.27	
〃	王志道	C. D. Wang	1987.5.27-1990.6	
常務董事 Managing Directors	王志道	C. D. Wang	1986.1.1-1987.5.27	
〃	鄭世松	Theodore S.S. Cheng	1987.5.27-1990.6	
〃	陳啓川	Frank C. Chen	1986.1.1-1989.3.15	
〃	瞿荊洲	Chin-Chow Chu	1986.1.1-1990.6	
〃	毛信泉	Shin-Chuan Mao	1986.1.1-1990.6	
董事 Directors	魏宗鐸	Tsung-To Way	1986.1.1-1989.3.15	
〃	金克和	K. H. King	1987.5.27-1990.6	
〃	趙自齊	Tze-Chi Chao	1986.1.1-1988.11.9	
〃	辜振甫	C. F. Koo	1986.1.1-1990.6	
〃	許金德	Chin-Ten Hsu	1986.1.1-1989.3.15	
〃	陳茂榜	M. P. Chen	1986.1.1-1989.3.15	
〃	徐有庠	Y. Z. Hsu	1986.1.1-1990.6	
〃	吳火獅	Ho-Su Wu	1986.1.1-1986.10.18	
〃	姚正中	Cheng-Chung Yao	1986.1.1-1990.6	
〃	陳思明	See-Ming Chen	1986.1.1-1987.5.27	
〃	曹立巘	L. C. Tsao	1986.1.1-1990.6	
〃	張殿	Yen Chang	1988.11.9-1990.6	
〃	林國人	Kuo-Jen Lin	1987.4.25-1990.6	

9 4 0 4 3 5 7 3 1 0 5

Title 職稱	Name In Chinese 中文姓名	Name In English 英文姓名	Period in Charge 擔任職務起迄日期	Remark 備註
董事長 Chairman	金克和	K. H. King	1986.1-1987.5	
董事長 Chairman	王志道	C. D. Wang	1987.6-1990.6	
總經理 President	王志道	C. D. Wang	1986.1-1987.5	
總經理 President	鄭世松	Theodore S. S. Cheng	1987.9-1990.6	
副總經理 Executive Vice President	張學林	Howard L. Chang	1986.1-1990.1	
〃	朱森元	Sung-Yuen Chu	1986.1-1990.6	
〃	袁德泰	James T.T. Yuan	1990.2-1990.6	
秘書處處長 Chief Secretary	王光亞	Kang-Ya Wang	1986.1-1990.2	
〃	謝孝惠	Hsiaw-Huey Hsieh	1990.3-1990.6	

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SATTERLEE STEPHENS BURKE & BURKE
230 PARK AVENUE
NEW YORK, N. Y. 10169-0079
(212) 818-9200

47 MAPLE STREET
SUMMIT, N.J. 07901
(201) 277-2221

TELEX NO. 233437
CABLE "SATERFIELD" NEW YORK
TELECOPIER (212) 818 9606, 9607

June 27, 1990

VIA FEDERAL EXPRESS

Mr. Jonathan Bernstein
Assistant General Counsel
Federal Election Commission
Room 657
999 E Street, N.W.
Washington, D.C. 20463

ATTN: Mr. Michael Troy

Re: MUR 2892
International Commercial Bank of China ("ICBC")

HAND DELIVERED

90 JUN 28 AM 9:58

Dear Mr. Troy:

As counsel to ICBC, we enclose its response to the interrogatories submitted to it in connection with the above-referenced matter.

If you have any questions about ICBC's response, please call Mr. William Jackson or the undersigned of this office.

Very truly yours,

Gregory H.K. Chiang

Gregory H.K. Chiang

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 28 AM 10:47

GHKC:se
Enclosure

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KOBAYASHI, WATANABE, SUGITA, KAWASHIMA & GODA
ATTORNEYS AT LAW
HAWAII TOWER, 6th FLOOR
745 FORT STREET
HONOLULU, HAWAII 96813-3889
TELEPHONE (808) 544-8300

Kevin S.C.Chang*
Kale Feldman*
Alan M. Goda*
Lyle Y. Hayashi*
J. Douglas Ing*
Cheryl K. Kabasa*
James Kawashima*
Bert T. Kobayashi, Jr.*
John T. Komeiji*
Wray H. Kondo*
Benjamin A. Kudo*
Dale W. Lee*
Ronald Y. K. Leong*
Michael A. Lorusso*
Lee R. Smith*
Kenneth Y. Sugita*
Robert T. Takamatsu*
Jeffrey N. Watanabe*
Cynthia Winegar*
Randall Y. Yamamoto*
*A Law Corporation

Jan M. L. Y. Aeu
George B. Apter
Ferdinand G. Aranas
Wendell H. Fuji
Charles W. Gall
Rosanne K. Goo
Lyle S. Hosoda
Robert K. Ichikawa
David B. Keapu
Donna Y. Kanemaru
Pamela J. Larson
Alan K. Maeda
David L. Morris
Janeen A. Okis
Fred Troncone

OF COUNSEL:
George R. Ariyoshi
Bert T. Kobayashi, Sr.
Russell K. Kono

June 26, 1990

HAND DELIVERED

90 JUN 28 AM 9:15

VIA DHL COURIER SERVICE

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Attn: Michael Troy

Re: Hachidai USA, Inc./MUR 2892

Dear Mr. Troy:

Per the Interrogatories and Request for Production of Documents included with letter dated May 21, 1990 and the extension of time granted for the above in letter dated June 18, 1990, we submit the enclosed materials.

If you should have any questions with regard to the above, please do not hesitate to contact the undersigned directly.

Very truly yours,

Alan K Maeda

ALAN K. MAEDA
for
KOBAYASHI, WATANABE,
SUGITA, KAWASHIMA & GODA

90 JUN 28 AM 10:47
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

AKM (3039F)

Enclosures

9404357310 8

HACHIDAI USA, INC.'S ANSWERS TO INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS

1. State your name, local address, business, and where you are incorporated.

Answer:

Hachidai USA, Inc.
444 Hobron Lane, Vista Level
Honolulu, Hawaii 96813

Business: Real Estate Investment and Development

Incorporated: April 1, 1987 in State of Hawaii

2. Identify all officers and directors:

Answer:

Katsuhiro Kawaguchi
President/Treasurer/Director
8-7 2-Chome, Higashi-Shinbashi
Minato-ku, Tokyo 105
JAPAN

Akira Kato
Vice President/Director
400 Hobron Lane, #3312
Honolulu, Hawaii 96815

3. Identify all management personnel.

Answer:

Akira Kato
see Item No. 2

Greig A. Porter
Development Manager
4369 Royal Place
Honolulu, Hawaii 96816

4. State whether you are a subsididiary of any entity. If so, identify all entities with ownership rights.

Answer:

Hachidai USA, Inc. is a wholly owned subsidiary of Hachidai Sangyo Kabushiki Gaisha, whose principle business address is Hachidai Shinbashi Building, 8-7 2-Chome, Higashi-Shinbashi, Minato-ku, Tokyo 105, Japan

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5. List all contributions (date, amount, recipient) made by you to federal, state, and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

Answer:

Hachidai USA, Inc. made a contibution to the Friends of Fasi of $2,000.00 on March 16, 1988. The Friends of Fasi is a political campaign organization for the Honorable Frank Fasi, current Mayor of the City and County of Honolulu, Hawaii. No refund has been made of this contribution. Hachidai USA, Inc. is not required to file a report with any State election board for contributions made in Hawaii.

6. List all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

Answer:

Alan M. Goda, Esq.
c/o Kobayashi, Watanabe, et. al.
127 Dowsett Avenue
Honolulu, Hawaii 96817

Toshiyuki Murakami
former Secretary of Hachidai USA, Inc.
16-15 Nakazato 3-Chome
Kita-ku, Tokyo 14
JAPAN

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

The funds used to make the contributions were provided by revenues generated by the Eaton Square Shopping Plaza. Eaton Square Shopping Plaza was owned by Eaton Square Shopping Plaza, Inc., which was another wholly owned subsidiary of Hachidai Sangyo Kabushiki Gaisha.

8. State whether you maintain a political action committee. Is so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

9 4 0 4 3 5 7 3 1 1 0

Answer:

Hachidai USA, Inc. does not maintain a political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

Answer:

Hachidai USA, Inc. does not maintain a pool of funds for election activity.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

Answer:

Akira Kato, who has been associated with Hachidai USA, Inc. since January, 1988, with the assistance of counsel.

9404357311

REQUEST FOR PRODUCTION OF DOCUMENTS

The Commission requests the following documents: all election reports required to be filed with any government agency.

Answer.

Consistent with Hachidai USA, Inc.'s answer in Question No. 5 above, there are no election reports that may be provided by Hachidai USA, Inc.

2404357311 2

KOBAYASHI, WATANABE, SUGITA, KAWASHIMA & GODA
ATTORNEYS AT LAW
HAWAII TOWER, 8th FLOOR
745 FORT STREET
HONOLULU, HAWAII 96813-3889
TELEPHONE (808) 544-8300

CONFIRMATION COPY

Kevin S.C. Chang *
Kale Feldman *
Alan M. Goda *
Lyle Y. Herada *
J. Douglas Ing *
Cheryl K. Kakazu *
James Kawashima *
Bert T. Kobayashi, Jr. *
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Pamela J. Larson
Alan K. Maeda
David L. Morrow
Janeen A. Ohta
Fred Troncone

OF COUNSEL
George R. Ariyoshi
Bert T. Kobayashi, Sr.
Russell K. Kono

Facsimile: (808) 544-8399
Telex: 6502398686 MCI
MCI Mail: 2398685
ABA/Net: ABA2281

June 26, 1990

90 JUN 28 AM 9:15
HAND DELIVERED

VIA FACSIMILE

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D. C. 20463

Attention: Michael Troy

Re: MUR 2892
Ohbayashi Hawaii Corp.

Dear Mr. Troy:

Enclosed please find Ohbayashi Hawaii Corporation's Answers to Interrogatories and Response to Request for Production of Documents in the above-referenced matter.

Please contact the undersigned if you have any questions. We look forward to achieving pre-probable cause conciliation. Thank you.

Very truly yours,

KEVIN S.C. CHANG
for
KOBAYASHI, WATANABE,
SUGITA, KAWASHIMA & GODA

KSCC:me

Enclosure

cc: Ohbayashi Hawaii Corporation

2404357311 3

OHBAYASHI HAWAII CORPORATION'S ANSWERS TO INTERROGATORIES AND RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS

1. State your name, local address, business, and where you are incorporated.

Ans.

Name: Ohbayashi Hawaii Corporation ("Ohbayashi Hawaii").

Local Address: Pacific Tower, Suite 2680,
1001 Bishop Street
Honolulu, Hawaii 96813.

Business: Construction, hotel and real estate development.

Incorporation: State of Hawaii - 1972.

2. Identify all officers and directors.

Ans.

Officers: President - Toshiharu Hino (permanent resident status);
Vice President - Norihide Okazaki permanent resident status);
Secretary/Treasurer - Eiichi Iwasaki (U.S. citizen).
Directors: Yoshiro Ohbayashi
Tadashi Okada;
Keizo Ishii;
Yoshio Shinohara;
Wakao Ohba;
Toshiharu Hino;
Shigeru Suzuki;
Genro Kashiwa; and
Sedoni Kosasa

3. Identify all managment personnel.

Ans.

The officers of Ohbayashi Hawaii are directly involved in the management of the company.

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4. State whether you are a subsidiary of any entity. If so, idenitfy all entitites with ownership rights.

Ans.

Ohbayashi Hawaii is a wholly owned subsidiary of Ohbayashi Corporation, a Japanese corporation.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

Ans.

Ohbayashi Hawaii's political contributions include the following:

1) Friends For Fasi in the amount of $1,000 on September 12, 1988;

2) Friends For Fasi in the amount of $1,000 on August 24, 1987;

3) Citizens for John D. Waihee in the amount of $2,000 on September 23, 1988; and

4) Friends for Joe Leong in the amount of $500 on June 7, 1988.

The $500 contribution to Friends for Joe Leong was returned to Ohbayashi Hawaii on or about February 2, 1989. Ohybayashi Hawaii accepted the returned contribution and negotiated the $500 check drawn on the Friends for Joe Leong account on February 6, 1989.

Ohbayashi Hawaii is not required to file reports with the Hawaii Campaign Spending Commission.

6. Identify all person who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

Ans.

Ohbayashi Hawaii made political contributions at the recommendation of its American consultant,

9 4 0 4 3 5 7 3 1 1 5

Norman Quon. Ohbayashi Hawaii's decision to follow the recommendation of Mr. Quon was made by the company's President, Toshiharu Hino.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

Ans.

Ohbayashi Hawaii was the source of funds used to make the contributions noted above. Funding for Ohbayashi Hawaii is generated by the company's business enterprise in the State of Hawaii. Ohbayashi Hawaii has done business in the State of Hawaii for over the past fifteen years.

Ohbayashi Corporation, the Japanese parent company of Ohbayashi Hawaii, was not the source of funding for the political contributions made by Ohbayashi Hawaii. Ohbayashi Corporation is not the predominant source of funding for Ohbayashi Hawaii.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

Ans.

Ohbayashi Hawaii does not maintain a political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

Ans.

Ohbayashi Hawaii does not maintain a pool of funds specified for election activity.

9 4 0 4 3 5 7 3 1 1 6

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

Toshiharu Hino, (President, six (6) years with Ohbayashi Hawaii) with the assistance of counsel.

The commission requests the following documents: all election reports required to be filed with any government agency.

Ohbayashi Hawaii is not required to file reports with the Hawaii Campaign Spending Commission.

9 4 0 4 3 5 7 3 1 1 1 7

GC 6872

WILMER, CUTLER & PICKERING
2445 M STREET, N. W.
WASHINGTON, D. C. 20037-1420

TELEPHONE (202) 663-6000
FACSIMILE (202) 835-0819,
429-6883, 429-4930, 293-5929
TELEX 440230 WCP UI
ABA NET ABA1354

4 CARLTON GARDENS
LONDON SW1Y 5AA
TELEPHONE 011 (441) 839-4466
FACSIMILE 011 (441) 839-3537
TELEX 8813918 WCP LDN

15 RUE DE LA LOI
B-1040 BRUSSELS
TELEPHONE 011 (322) 231-0803
FACSIMILE 011 (322) 230-4322

DANIEL K. MAYERS
DIRECT LINE (202)
663-6278

June 28, 1990

90 JUL -6 PM 12: 32

BY HAND

Mr. Michael Troy
Office of the General Counsel
Federal Election Commission
999 E Street, N.W., 6th Floor
Washington, D.C. 20463

Re: MUR 2892
Coordination Council for North American Affairs

Dear Mr. Troy:

The Coordination Council for North American Affairs ("CCNAA") hereby requests an additional twenty (20) day extension of time, through July 25, 1990, to respond to Chairman Elliott's letter of May 21 received by the CCNAA's Honolulu office on May 30, 1990. This extension of time in which to respond is necessary in order to communicate with the foreign principal and resolve certain issues raised in our meeting with you today.

Please let my partner David Westin (663-6354) know as promptly as possible your decision on this request.

Nothing in this letter constitutes a waiver by CCNAA of any of its privileges and immunities or a submission to the jurisdiction of the Federal Election Commission.

Sincerely,

Daniel K. Mayers

Daniel K. Mayers

9404357318

P.1

OGC 6549

731-7

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2892

NAME OF COUNSEL: Daniel K. Mayers

ADDRESS: Wilmer, Cutler & Pickering
2445 M Street, N. W.
Washington, DC 20037-1420

TELEPHONE: (202) 663-6228

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 13 PM 12:44

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

June 11, 1990
Date

Signature Stephen S.F. Chen

RESPONDENT'S NAME: Coordination Council for North American Affairs

ADDRESS: 4201 Wisconsin Avenue, N.W.
Washington, DC 20016

HOME PHONE:

BUSINESS PHONE: (202) 895-1800

9404357319

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 10, 1990

Mr. David Westin
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420

RE: MUR 2892
Coordination Council for
North American Affairs

Dear Mr. Westin:

This is in response to your letter dated June 28, 1990, which we received on July 6, 1990, requesting an extension of an additional twenty days to respond to the above-captioned matter. The Commission has already granted an extension until July 5, 1990. However, because of the circumstances involved in your case, I am granting you an additional extension of twenty days for a total of forty days. Accordingly, your response is due by the close of business on July 25, 1990.

If you have any questions, please contact Michael Troy, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Jonathan Bernstein
Assistant General Counsel

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OGC 6516

McCORRISTON MIHO & MILLER

ATTORNEYS AT LAW

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90 JUL -2 AM 9:31

June 29, 1990

Office of the General Counsel
Federal Election Commission
Room 659, 999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

90 JUL -2 PM 12:04

Attention: Michael Troy

Re: MUR 2892
Daiichiya-Love's Bakery, Inc.

Gentlemen:

Find enclosed the Answers to Interrogatories and Request for Production of Documents submitted by Daiichiya-Love's Bakery, Inc. pursuant to your letter of May 21, 1990. Please be advised that our client does not have in its possession any of the requested documents.

Please call or write if there are any further questions in regard to this submittal.

Very truly yours,

McCORRISTON, MIHO & MILLER

Stephen M. Okano

SMO:kry
Enc.
cc: Mr. Thomas Meehan
c/o Daiichiya-Love's Bakery, Inc.

2404357312 1

Five Waterfront Plaza, 4th Floor, 500 Ala Moana Boulevard
Honolulu, Hawaii 96813, Telephone: (808) 529-7300
FAX: (808) 524-8293, Cable: "Attorneys Honolulu"

Of Counsel:
McCORRISTON, MIHO & MILLER

STEPHEN M. OKANO 871-0
Five Waterfront Plaza, Suite 400
500 Ala Moana Boulevard
Honolulu, Hawaii 96813
Telephone No. 529-7300

Attorney for DAIICHIYA-LOVE'S
BAKERY, INC.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2892
	)	

7404357312 2

ANSWERS TO INTERROGATORIES

THOMAS L. MEEHAN, President of DAIICHIYA-LOVE'S BAKERY, INC., hereby responds to The Federal Election Commission's Request for Interrogatories as follows:

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS:

1. NAME: DAIICHIYA-LOVE'S BAKERY, INC.
   LOCAL ADDRESS: 911 MIDDLE STREET
   HONOLULU, HAWAII 96819
   BUSINESS: WHOLESALE BAKERY
   WHERE INCORPORATED: STATE OF HAWAII

2. OFFICERS AND DIRECTORS:
   CHAIRMAN OF THE BOARD: MR. MASAHIDE HOSOKAI
   PRESIDENT: MR. THOMAS L. MEEHAN
   SECRETARY: MR. STEPHEN M. OKANO
   VICE PRES.-TREASURER: MR. ISAO TAKAGI
   DIRECTOR: MR. YOSHIO HOSOKAI
   DIRECTOR: MR. HOWARD K. HIROKI
   DIRECTOR: MR. TAKASHI HOSOKAI
   DIRECTOR: MR. HIROSHI UENO

3. MANAGEMENT PERSONNEL:
   PRESIDENT: MR. THOMAS L. MEEHAN
   VP-TREASURER: MR. ISAO TAKAGI
   PRODUCTION SUPT.: MR. MICKEY COFFMAN
   ASST. PROD. SUPT.: MR. ERNEST COOK
   ASST. CHIEF ENGINEER: MR. MIGUEL DOLES
   PLANT SANITARIAN: MR. JOSE FELICIANO
   PURCHASING AGENT: MR. CLIFFORD GOYA
   PERSONNEL MANAGER: MRS. JEAN HAGI
   ASST. PROD. SUPT.: MR. WILFRED KAULUKOU
   PERSONNEL ASST.: MS. KAY YOUNG
   ASST. CHIEF ENGINEER: MR. JESSE BAKER
   BREAD SALES MGER: MR. JAMES LAU
   BREAD SALES MGER: MR. CLYDE MATSUMAKI
   CAKE SALES MGER: MR. WILLIAM PICHE
   ASST. CHIEF ENGINEER: MR. SHINJI NAKAGAWA
   SALES SECRETARY: MS. FLORENCE OGAWA
   GENERAL SALES MGER: MR. RONALD REA
   THRIFT STORE MGER: MS. SHARON SAMSON
   SHIPPING SUPT. MR. ROBERT SHOFF
   CHIEF ENGINEER: MR. ALLAN SMITH
   CONTROLLER: MR. EDWARD SUNAHARA
   ACCOUNTING SUPERVISOR: MR. LARRY HAYASHI
   ASST. ACCOUNTING SUPERVISOR: MR. GLEN CHINEN
   PAYROLL CLERK: MS. SANDRA BITTERMAN
   SECRETARY: MRS. JANET UMEMOTO
   DATA PROCESSING MGER: MR. DWYANE ARAKAKI
   ASST. PROD. SUPT.: MR. TAKESHI HOSOJIMA
   ASST. PLANT SANITARIAN: MR. JOHN MISHIMA
   SALES SUPERVISOR: MR. GLEASON CHUN
   SALES SUPERVISOR: MR. WARREN FONG
   SALES SUPERVISOR: MR. DEREK MAEMORI
   SALES SUPERVISOR: MR. PAUL KAOPUA
   SALES SUPERVISOR: MR. WAYNE YAMAGUCHI
   SALES SUPERVISOR: MR. IRWIN WONG
   ASST. SALES SUPVR.: MR. TERRENCE WHANG

9 4 0 4 3 5 7 3 1 2 3

SALES SUPERVISOR: MR. MICHAEL KATO
AGENCY SALES SUPERVISOR: MR. JERRY TAISE
AGENCY SALES SUPERVISOR: MR. DENNIS OSHIRO
AGENCY SALES SUPERVISOR: MR. RUSSELL SATO
AGENCY SALES REP.: MR. LINCOLN LIN KEE

4. SUBSIDIARY OF DAIICHIYA BAKING CO., LTD. - 99.7%
HOWARD HIROKI - .3%

5. PAYABLE TO: CITIZENS FOR WAIHEE
POLITICAL CONTRIBUTION-FUNDRAISER FOR JOHN WAIHEE, GOVERNOR
DATE: APRIL 30, 1990
AMOUNT: $400.00

6. TOM MEEHAN, PRESIDENT - LOVE'S BAKERY

7. DONATIONS COME FROM OPERATING FUNDS OF LOVE'S BAKERY.

8. NO

9. NO

10. TOM MEEHAN

2404357312 4

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

THOMAS L. MEEHAN, being first duly sworn on oath, deposes and says: That he is the President of DAIICHIYA-LOVE'S BAKERY, INC., that he is authorized to answer the foregoing Interrogatories, that he has read the foregoing Answers to Interrogatories, and that the same are true to the best of his knowledge and belief.

DAIICHIYA-LOVE'S BAKERY, INC.

By Thomas L. Meehan
THOMAS L. MEEHAN
Its President

Subscribed and sworn to before me this 26 day of June, 1990.

Cheryl L. Cupp
NOTARY PUBLIC, State of Hawaii

My commission expires: [illegible] Oct. 8, 1992

7404357312 5

006809

TANIGAWA & TANIGAWA
Attorneys at Law
Suite 1550 Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813

Herbert H. Tanigawa
Michael K. Tanigawa

Telephone
(808) 521-8354
Fax
(808) 531-8263

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 JUL -2 AM 9:47

June 21, 1990

Patty Reilly, Esq.
General Counsel's Office
Federal Election Commission
999 E.Street, NW
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
90 JUL -2 PM 12:03

Re: MUR 2892
Masao Hayashi

Dear Ms. Reilly:

Enclosed is the response to interrogatories and request for production of documents. We do not have or have been unable to find the documents you have requested.

If you require additional information in order to facilitate conciliation in this matter, please feel free to contact me.

Sincerely,

Michael K. Tanigawa

MICHAEL K. TANIGAWA

encl.

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RESPONSE TO INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS BY MASAO HAYASHI IN MUR 2892

1. Mr. Hayashi was the General Manager of Japan Travel Bureau International, Inc. in Hawaii at the time the contributions in question were made. His address at that time was 4734 Farmers Road, Honolulu, Hawaii 96816. Mr. Hayashi's current business address is Japan Travel Bureau, Kaigai Ryoko-Honshanai Shiten, 1-6-4 Marunouchi, Chiyoda-ku, Tokyo, Japan 100. Mr. Hayashi's business telephone number is (03) 284-7520. His residence address is 4-32-9 Matsubara, Setagaya-ku Tokyo, Japan. His residence phone number is (03) 324-4044. He is presently employed by Japan Travel Bureau Inc. in Japan. Mr. Hayashi's nationality is Japanese.

2. At the time the contributions in question were made, Mr. Hayashi was in Hawaii on an E-1 non-immigrant status. Mr. Hayashi is Japanese.

3. Mr. Hayashi is not a resident alien.

4. Mr. Hayashi does not remember having made any contributions to federal, state or local elections except for the two contributions identified in the complaint. With respect to those two contributions, Mr. Hayashi remembers having made the contributions, but he does not have any canceled checks or receipts relating to those contributions and he does not remember if the contributions were made by check or cash or the specific amounts of the contributions.

5. Masao Hayashi. Mr. Hayashi is identified in response to question #1.

6. Mr. Hayashi does not specifically remember the source of the funds used to make the contributions.

I declare under oath that the foregoing responses to interrogatories are true and correct to the best of my knowledge and belief.

DATED: Tokyo, Japan June 11, 1990.

Masao Hayashi

MASAO HAYASHI

9404357312 7

OGC 6802

FUJIYAMA, DUFFY & FUJIYAMA
ATTORNEYS AT LAW, A LAW CORPORATION
SUITE 2700, PAUAHI TOWER, BISHOP SQUARE
1001 BISHOP STREET
HONOLULU, HAWAII 96813

TELEPHONE (808) 536-0602
TELECOPIER (808) 536-5117

WALLACE S. FUJIYAMA
JAMES E. DUFFY, JR.
RODNEY M. FUJIYAMA
JAMES J. STONE
ARCHIE T. IKEHARA
RALPH R. LA FOUNTAINE
COLBERT M. MATSUMOTO
GLENN K. SATO
STEVEN J. T. CHOW
—
DAVID Z. ARAKAWA
LESLIE E. KOBAYASHI
NANCY J. RYAN

SCOTT S. HASHIMOTO
WYNDE M. YAMAMOTO
WILLIAM H. YIN
BRUCE K. CAMPBELL
WARD F. N. FUJIMOTO
DEXTER D. DEL ROSARIO
ROSS N. TAOSAKA
CHRIS A. THOMAS
VINCENT A. RHODES
DIANE K. TAIRA
MICHAEL T. LEE
DOUGLAS H. KNOWLTON

June 28, 1990

Federal Elections Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTIONS COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUL -2 PM 12:40

Attention: Mr. Michael Troy

RE: MUR 2892
Takayuki Mizutani

Gentlemen:

This is in response to your May 21, 1990 letter to our law firm regarding the above matter pertaining to our client.

Attached are our client's responses to your request for answers and documents.

Given the circumstances set forth in the attachment, we ask you to please note that our client has taken immediate steps to correct the problems alleged in the complaint and that our client did not willfully or intentionally violate any federal election laws.

On behalf of our client, we respectfully ask that given the circumstances no civil penalties be assessed against our client. Please see Federal Election Commission v. Ted Haley Congressional Committee, 654 F. Supp. 1120 (W.D. Wash. 1987).

Our client would like to amicably resolve this matter as soon as possible and has asked us to pursue pre-probable cause conciliation.

Your cooperation and understanding in this matter will be appreciated. Please don't hesitate to contact us if you have any questions. Thank you.

Very truly yours,

FUJIYAMA, DUFFY & FUJIYAMA
Attorneys At Law, A Law Corporation

By JAMES J. STONE

JJS:bp
Enclosures

2404357312 8

RE: MUR 2892
MR. TAKAYUKI MIZUTANI

AFFIDAVIT OF TAKAYUKI MIZUTANI

STATE OF HAWAII)
: SS.
CITY AND COUNTY OF HONOLULU)

TAKAYUKI MIZUTANI, being first duly sworn, on oath, deposes and says:

1. That Affiant is a Japanese citizen and resides at 5355 Oio Drive, Honolulu, Hawaii, 96821;

2. That Affiant is aware of a certain complaint, more particularly MUR 2892, which was filed against him by the Federal Elections Commission;

3. That Affiant alone made the decision to make the contribution which is the subject of the aforementioned complaint;

4. That prior to making the contribution, it was Affiant's understanding that the contribution was legal under Hawaii law and that Hawaii's State Campaign Spending Commission was of the opinion that the federal election laws applied only to federal elections and not to state or local elections. Thus, Affiant at the time of the decision, was not aware that such a contribution could be considered a violation of federal election laws;

5. That in making the aforementioned contribution, it was not the Affiant's intent to deceive or violate any federal law;

2404357312 9

6. That Affiant recalls asking that the contribution be returned and is still checking his records to see if it was returned;

7. That Affiant states that the answers and responses set forth in Exhibit "1" are true and correct to the best of his knowledge;

8. That since it was not the Affiant's intent to deceive anyone or violate any federal election laws, and since Affiant has sought the immediate return of the contribution, Affiant respectfully asks that no action and no civil penalties be assessed or taken against him;

9. That Affiant is willing to enter into pre-probable cause conciliation as a means of amicably settling this matter; and

Further Affiant sayeth naught.

DATED at Honolulu, Hawaii, June 28th, 1990.

Takayuki Mizutani

TAKAYUKI MIZUTANI

Subscribed and sworn to before me
this 28th day of June, 1990.

Karen K Miyahira

Notary Public, State of Hawaii.

My commission expires: 4-5-92

RE: MUR 2892
TAKAYUKI MIZUTANI

RESPONSE TO WRITTEN INTERROGATORIES
OF THE FEDERAL ELECTIONS COMMISSION DATED MAY 21, 1990

1. State your name, local address (home and business), telephone number (home and business) and occupation.

Answer:

Takayuki Mizutani

Residence: 5355 Oio Drive
Honolulu, Hawaii 96821
Phone: (808) 373-3806

Business : 801 Kaheka Street
Honolulu, Hawaii 96814
Phone: (808) 949-1066

2. State your nationality.

Answer:

Japanese.

3. Are you a resident alien of the United States? If so, provide your INS folder number.

Answer:

No.

4. If you are not a United States citizen or a permanent resident alien of the United States, list all contributions (date, amount, recipient) made by you to federal, state and local elections.

Answer:

Contributions made by me:
To: Citizens for Waihee
Date: October 17, 1986
Check Number: Central Pacific Bank Checking Account
(Main Office Account No. 01-45081-6)
Check Number 20
Amount: $500.00

EXHIBIT 1

2404357131

5. List all persons who participated in the decision to make each contribution noted above.

Answer:

Only myself.

6. If the contributions noted above were made from funds other than your own, state the source of funds used to make these contributions.

Answer:

N/A

2404357313 2

RESPONSE REQUEST FOR PRODUCTION OF DOCUMENTS
OF THE FEDERAL ELECTIONS COMMISSION DATED MAY 21, 1990

The Commission requested the following documents: A copy of your green card if you answered question 3 in the affirmative, copies of all checks or receipts for contributions you were required to list in response to interrogatory 4.

Response to Request: Attached is a copy of the subject check stated above.

2404357313

06C 6864

FUJIYAMA, DUFFY & FUJIYAMA
ATTORNEYS AT LAW, A LAW CORPORATION
SUITE 2700, PAUAHI TOWER, BISHOP SQUARE
1001 BISHOP STREET
HONOLULU, HAWAII 96813

TELEPHONE (808) 536-0602
TELECOPIER (808) 536-5117

WALLACE S. FUJIYAMA
JAMES E. DUFFY, JR.
RODNEY M. FUJIYAMA
JAMES J. STONE
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RALPH R. LA FOUNTAINE
COLBERT M. MATSUMOTO
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STEVEN J. T. CHOW
—
DAVID Z. ARAKAWA
LESLIE E. KOBAYASHI
NANCY J. RYAN

SCOTT S. HASHIMOTO
WYNDE M. YAMAMOTO
WILLIAM H. TIN
BRUCE K. CAMPBELL
WARD F. N. FUJIMOTO
DEXTER D. DEL ROSARIO
ROSS N. TADSAKA
CHRIS A. THOMAS
VINCENT A. RHODES
DIANE K. TAIRA
MICHAEL T. LEE
DOUGLAS H. KNOWLTON

June 28, 1990

Federal Elections Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Attention: Mr. Michael Troy

RE: MUR 2892
Daiei Hawaii Investments, Inc.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUL -2 PM 12:41

Gentlemen:

This is in response to your May 21, 1990 letter to our law firm regarding the above matter pertaining to our client.

Attached are our client's responses to your request for answers and documents.

Given the circumstances set forth in the attachment, we ask you to please note that our client has taken immediate steps to correct the problems alleged in the complaint and that our client did not willfully or intentionally violate any federal election laws.

On behalf of our client, we respectfully ask that given the circumstances no civil penalties be assessed against our client. Please see Federal Election Commission v. Ted Haley Congressional Committee, 654 F. Supp. 1120 (W.D. Wash. 1987).

Our client would like to amicably resolve this matter as soon as possible and has asked us to pursue pre-probable cause conciliation.

Your cooperation and understanding in this matter will be appreciated. Please don't hesitate to contact us if you have any questions. Thank you.

Very truly yours,

FUJIYAMA, DUFFY & FUJIYAMA
Attorneys At Law, A Law
Corporation

By JAMES J. STONE

JJS:bp
Enclosures

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RE: MUR 2892
DAIEI HAWAII INVESTMENTS, INC.

AFFIDAVIT OF YUZURU TATSUOKA

STATE OF HAWAII)
: SS.
CITY AND COUNTY OF HONOLULU)

YUZURU TATSUOKA, being first duly sown, on oath, deposes and says:

1. That Affiant is a Japanese citizen and resides at 4106 Harding Avenue, Honolulu, Hawaii 96816.

2. That Affiant is the Vice-President, Tressurer and Director of DAIEI HAWAII INVESTMENTS, INC., a Hawaii corporation ("Corporation");

3. That Affiant is aware of certain complaints, more particularly MUR 2892 and MUR 3004, which were filed against the Corporation by the Federal Elections Commission;

4. That prior to making the contributions, it was Affiant's understanding, as well as that of the other Board members of the Corporation, that the contributions were legal under Hawaii law and that Hawaii's State Campaign Spending Commission was of the opinion that the federal election laws

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applied only to federal elections and not to state or local elections. Thus, Affiant and Board members at the time of the decisions were not aware that such contributions could be considered a violation of federal election laws;

5. That in making the aforementioned contributions, it was not the Affiant's or the Corporation's intent to deceive or violate any federal law;

6. That following the filing of the complaints, Affiant, on behalf of the Corporation, consulted with a private attorney and following such consultation, it was decided to immediately request the return of the contributions rather than contesting the matter;

7. That Affiant states that the answers and responses set forth in Exhibit "1" are true and correct to the best of his knowledge;

8. That since it was not the Affiant's or the Corporation's intent to deceive anyone or violate any federal election laws, and since the corporation took immediate steps to try to correct the problem, Affiant respectfully asks that no action and no civil penalties be assessed or taken against the Corporation;

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9. That the Corporation is willing to enter into pre-probable cause conciliation as a means of amicably settling this matter; and

Further Affiant sayeth naught.

DATED at Honolulu, Hawaii, _____.

YUZURU TATSUOKA

Subscribed and sworn to before me this 28th day of JUNE, 1990.

Notary Public, State of Hawaii

My commission expires: 7-12-91

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RE: MUR 2892
DAIEI HAWAII INVESTMENTS, INC.

RESPONSE TO WRITTEN INTERROGATORIES
OF THE FEDERAL ELECTIONS COMMISSION DATED MAY 21, 1990

1. State your name, local address, business, and where you are incorporated.

Answer:

Daiei Hawaii Investments, Inc.
801 Kaheka Street
Honolulu, Hawaii 96814

Principal business is real estate development and investments. Incorporated in the state of Hawaii.

2. Identify all officers and directors.

Answer:

TETSU AIKO
539 Maono Loop
Honolulu, HI 96821

President & Chairman of the Board, (permanent resident alien; green card holder)

TAKAYUKI MIZUTANI
5355 Oio Drive
Honolulu, HI 96821

Vice President & Secretary & Director (Japan citizen)

YUZURU TATSUOKA
4106 Harding Avenue
Honolulu, HI 96816

Vice President & Treasurer & Director (Japan citizen)

CHE HWAN CHANG
98-114 Lipoa Place
Aiea, HI 96701

Director (U.S. citizen)

9404357138

EXHIBIT 1

3. Identify all management personnel.

Answer:

Tetsu Aiko, Takayuki Mizutani, and Yuzuru Tatsuoka.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

Answer:

Yes. Daiei Hawaii Investments, Inc. is 100% owned by The Daiei (USA), Inc., The Daiei (USA), Inc., a Hawaii corporation, which is in turn 100% owned by The Daiei, Inc. (Japan corporation).

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

Answer:

The Corporation admits making the following cited contributions. Corporation made contributions of $350 and $250 as alleged in MUR 2892. On May 24, 1988, Corporation also made $500 contribution to Citizens for Waihee which is set forth in MUR 2846. The Corporation as stated in MUR 3004 made a $300 contribution to Friends of Milton Holt, a $200 contribution to Friends of Mike Crozier and a $250 contribution to Friends of Tony Chang. Also Daiei (USA), Inc. which owns all of the stock of the Corporation made a $250 contribution to Friends of Henry Peters also as alleged in MUR 3004. No contributions were ever made to any federal elections.

The Corporation has requested the return of the contributions and is still checking to see if all of the contributions have been returned. The Corporation is now aware that contributions in excess of $1,000 per election requires the filing of a report with the Campaign Spending Commission for the State of Hawaii. The Corporation never filed such a report and is checking to see if such a report needs to be filed since some or all of the contributions have been returned as requested.

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6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

Answer:

The making of contributions are decided upon by the board of directors who are noted above.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

Answer:

Funds for contributions are provided for from regular company earnings, namely our investment in the Ala Moana Shopping Center and not from a foreign national or a foreign source, either directly or indirectly.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

Answer:

No.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

Answer:

Company does not maintain any pool of funds specifically for political activity.

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10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

Answer:

Yuzuru Tasuoka with the assistance of James Stone, an attorney. Two years. Currently serves as a vice president and treasurer and director for the company.

9404357314 1

RESPONSE REQUEST FOR PRODUCTION OF DOCUMENTS
OF THE FEDERAL ELECTIONS COMMISSION DATED MAY 21, 1990

The Commission requested the following documents: all election reports required to be filed with any government agency.

Response to Request: As previously stated, no reports were filed.

9404357314 2

90-L-6803

FUJIYAMA, DUFFY & FUJIYAMA
ATTORNEYS AT LAW, A LAW CORPORATION
SUITE 2700, PAUAHI TOWER, BISHOP SQUARE
1001 BISHOP STREET
HONOLULU, HAWAII 96813

TELEPHONE (808) 536-0802
TELECOPIER (808) 536-5117

WALLACE B. FUJIYAMA
JAMES E. DUFFY, JR.
RODNEY M. FUJIYAMA
JAMES J. STONE
ARCHIE T. IREKAMA
RALPH R. LA FOUNTAINE
COLBERT M. MATSUMOTO
GLENN K. SATO
STEVEN J. T. CHOW
—
DAVID Z. ABRAMSON
LESLIE E. KOBAYASHI
NANCY J. RYAN

SCOTT S. HASHIMOTO
WYNDE N. YAMAMOTO
WILLIAM K. TIN
BRUCE R. CAMPBELL
WARD F. N. FUJIMOTO
DEXTER D. DEL ROSARIO
ROSS N. TAOSAKA
CHRIS A. THOMAS
VINCENT A. RHODES
DIANE R. TAIRA
MICHAEL T. LEE
DOUGLAS H. KNOWLTON

June 28, 1990

Federal Elections Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUL -2 PM 12: 44

Attention: Mr. Michael Troy

RE: MUR 2892
Minami Group (USA), Inc.

Gentlemen:

This is in response to your May 21, 1990 letter to our law firm regarding the above matter pertaining to our client.

Attached are our client's responses to your request for answers and documents.

Given the circumstances set forth in the attachment, we ask you to please note that our client has taken immediate steps to correct the problems alleged in the complaint and that our client did not willfully or intentionally violate any federal election laws.

On behalf of our client, we respectfully ask that given the circumstances no civil penalties be assessed against our client. Please see Federal Election Commission v. Ted Haley Congressional Committee, 654 F. Supp. 1120 (W.D. Wash. 1987).

Our client would like to amicably resolve this matter as soon as possible and has asked us to pursue pre-probable cause conciliation.

Your cooperation and understanding in this matter will be appreciated. Please don't hesitate to contact us if you have any questions. Thank you.

Very truly yours,

FUJIYAMA, DUFFY & FUJIYAMA
Attorneys At Law, A Law Corporation

By JAMES J. STONE

JJS:bp
Enclosures

2 4 0 4 3 5 7 3 1 4 3

RE: MUR 2892
MINAMI GROUP (USA), INC.

AFFIDAVIT OF MASAYUKI IKUMO

STATE OF CALIFORNIA)
: SS.
CITY AND COUNTY OF San Diego)

MASAYUKI IKUMO, being first duly sworn, on oath, deposes and says:

1. That Affiant is a Japanese citizen and resides at 531 Hakaka Place, Honolulu, Hawaii, 96816;

2. That Affiant is the Executive Vice-President of Minami Group (USA), Inc., a Hawaii corporation ("Corporation");

3. That Affiant is aware of certain complaints, more particularly MUR 2892 and MUR 3004, which were filed against the Corporation by the Federal Elections Commission;

4. That Affiant alone made the decisions for the Corporation to make the contributions which are the subject of the aforementioned complaints;

5. That prior to making the contributions, it was Affiant's understanding that the contributions were legal under Hawaii law and that Hawaii's State Campaign Spending Commission was of the opinion that the federal election laws applied only to federal elections and not to state or local elections. Thus, Affiant at the time of the decisions was not aware that such

2404357314 4

contributions could be considered a violation of federal election laws;

6. That in making the aforementioned contributions, it was not the Affiant's or the Corporation's intent to deceive or violate any federal law;

7. That following the filing of the complaints, Affiant, on behalf of the Corporation, consulted with a private attorney and following such consultation, it was decided to immediately request the return of the contributions rather than contesting the matter;

8. That the contributions have been returned as you will note from the exhibits attached to the answers to written interrogatories attached hereto as Exhibit "1";

9. That Affiant states that the answers and responses set forth in Exhibit "1" are true and correct to the best of his knowledge;

10. That since it was not the Affiant's or the Corporation's intent to deceive anyone or violate any federal election laws, and since the corporation took immediate steps to correct the problem, Affiant respectfully asks that no action and no civil penalties be assessed or taken against the Corporation;

9404357314 5

11. That the Corporation is willing to enter into pre-probable cause conciliation as a means of amicably settling this matter; and

Further Affiant sayeth naught.

DATED at San Diego, California, June 26 1990

MASAYUKI IKUMO

Subscribed and sworn to before me this 26 day of June, 1990.

Judy Ellis

Notary Public, State of California

My commission expires: 6/26/92

OFFICIAL SEAL
JUDYANN ELLIS
NOTARY PUBLIC - CALIFORNIA
SAN DIEGO COUNTY
My comm. expires JUN 26, 1992

9404357314 6

RE: MUR 2892
MINAMI GROUP (USA), INC.

RESPONSE TO WRITTEN INTERROGATORIES
OF THE FEDERAL ELECTIONS COMMISSION DATED MAY 21, 1990

1. State your name, local address, business, and where you are incorporated.

Answer:

Minami Group (USA), Inc.
Suite 2700
Pauahi Tower
Bishop Square
1001 Bishop Street
Honolulu, Hawaii 96813

A Hawaii corporation.

Primarily golf course development at this time; corporation also permitted to engage in other businesses which may lawfully be undertaken by a corporation.

2. Identify all officers and directors.

Answer:

Mr. Masao Nangaku
1-10 Sanban-Cho
Chiyoda-Ku
Tokyo, Japan

President/Director, Japanese citizen;

Masashige Nangaku
2-25-26 Kakinokizaka
Meguro-Ku
Tokyo, Japan

Vice President/Director, Japanese citizen;

Rodney M. Fujiyama
7318 Nuulolo Street
Honolulu, Hawaii 96825

Secretary, U.S. citizen;

2 4 0 4 3 5 7 3 1 4 7

EXHIBIT 1

Itsuo Kiyofuji
3-2-11 Ogikubo Sugin
Tokyo, Japan

Treasurer/Director, Japanese citizen;

Wallace S. Fujiyama
1803 Laukahi Street
Honolulu, Hawaii 96821

Director, U.S. citizen;

Yasutaka Onodera
3-12-1 Sendagaya Shi
Tokyo, Japan

Director, Japanese citizen;

Shigeo Togashi
3-10-1 Naritahigashi
Suginami-Ku
Tokyo, Japan

Director, Japanese citizen;

Eigo Ohtake
2-13-1-808
Sendagi B
Tokyo, Japan

Assistant Secretary/Director, Japanese citizen; and

Masayuki Ikumo
531 Hakaka Place
Honolulu, Hawaii 96816

Executive Vice President/Director, Japanese citizen.

3. Identify all management personnel.

Answer:

Day to day matters are handled by Mr. Masayuki Ikumo, Executive Vice-President and Director. Basic policy decisions and major decisions made by Board of Directors of corporation who were previously identified.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

Answer:

Corporation is not a subsidiary of any entity.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

Answer:

No contributions were made to any federal elections. The Corporation made the following cited contributions. Corporation admits making contribution to Friends for Fasi in the amount of $1,000.00 as stated by complainants and also making the contribution to Friends of Marshall Ige in the amount of $150.00 as stated by complainants in MUR 3004. Corporation is now aware that contributions in excess of $1,000.00 per election requires the filing of a report with the Campaign Spending Commission for the State of Hawaii. The corporation never filed such a report. The corporation is investigating matters to see if such a report needs to be filed especially since the aforementioned contributions have been returned to the corporation. Please see attached Exhibit "A".

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

Answer:

Mr. Masayuki Ikumo, Executive Vice-President/Director.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

Answer:

The source of funds was the cash-paid-in capital of the corporation provided by its sole shareholder, Mr. Masao Nangaku, a Japanese citizen, or other funds of the corporation obtained by way of loans.

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8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

Answer:

No.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

Answer:

Corporation has no pool of funds for election activity.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

Answer:

Mr. Masayuki Ikumo prepared the answers to these questions with the assistance of James J. Stone of the law firm of Fujiyama, Duffy & Fujiyama. The law firm is the corporate attorneys for the corporation. Mr. Ikumo has been associated with the corporation since its formation in December of 1986. Mr. Stone has assisted the corporation in this matter since the filing of the subject complaint.

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RESPONSE REQUEST FOR PRODUCTION OF DOCUMENTS
OF THE FEDERAL ELECTIONS COMMISSION DATED MAY 21, 1990

The Commission requested the following documents: all election reports required to be filed with any government agency.

Response to Request: As previously stated in the answers to interrogatories, no reports were filed.

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FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

No. 52

59-105/1213

June 22, 1989

PAY TO THE ORDER OF Minami Group (USA), Inc. $ 1,000.00

*****One Thousand and no/100***** DOLLARS

Honolulu Branch
Liberty Bank
1585 Pali Hwy. Hon., HI 96819

FOR Return Contribution

⑆121301057⑆ 13-003905⑈

FRIENDS FOR REPRESENTATIVE – MARSHALL K. IGE
45-579 KEAAHALA ROAD
KANEOHE, HAWAII 96744

1008

Feb. 7 1990

PAY TO THE ORDER OF Minami Group $ 150.00

One Hundred Fifty and no/100 DOLLARS

Central Pacific Bank
KING-SMITH BRANCH
50 N. King St.,
Honolulu, Hawaii 96817

FOR Return of Contribution

Caryn N. Ito

⑈001008⑈ ⑆121301578⑆ 12-00165 7⑈

EXHIBIT A

OGC 6801

RECEIVED
FEDERAL ELECTION COMMISSION
WASHINGTON

90 JUL -2 AM 10:27

FUJIYAMA, DUFFY & FUJIYAMA
ATTORNEYS AT LAW, A LAW CORPORATION
SUITE 2700, PAUAHI TOWER, BISHOP SQUARE
1001 BISHOP STREET
HONOLULU, HAWAII 96813

TELEPHONE (808) 536-0802
TELECOPIER (808) 536-5117

WALLACE S. FUJIYAMA
JAMES E. DUFFY, JR.
RODNEY M. FUJIYAMA
JAMES J. STONE
ARCHIE T. IKEHARA
RALPH R. LA FOUNTAINE
COLBERT M. MATSUMOTO
GLENN K. SATO
STEVEN J. T. CHOW
—
DAVID Z. ARAKAWA
LESLIE E. KOBAYASHI
NANCY J. BRIAN
SCOTT S. HASHIMOTO
WYNDE M. YAMAMOTO
WILLIAM H. YIM
BRUCE K. CAMPBELL
WARD F. N. FUJIMOTO
DEXTER D. DEL ROSARIO
ROSS N. TADSAKA
CHRIS A. THOMAS
VINCENT A. RHODES
DIANE K. TAIRA
MICHAEL T. LEE
DOUGLAS H. KNOWLTON

June 28, 1990

Mr. Michael Troy
Federal Elections Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

90 JUL -2 PM 12:03

RE: (1) MUR 2892
Minami Group (USA), Inc.
(2) MUR 2892
Daiei Hawaii Investments, Inc.
(3) MUR 2846
Takayuki Mizutani

Dear Mr. Troy:

As you know, our law firm represents the above-mentioned parties.

Responses to above items (1) and (2) will be sent to you by FAX and Express Mail this morning, Hawaii time.

As to above item (3), Mr. Mizutani will not be able to come to our office until this afternoon, Hawaii time. You, therefore, may not receive his responses until very late today, possibly after your office closes. If you have a serious problem with this, please let me know.

Your cooperation and understanding is appreciated. Please don't hesitate to contact me if you have any questions.

Very truly yours,

FUJIYAMA, DUFFY & FUJIYAMA
Attorneys At Law, A Law
Corporation

By JAMES J. STONE

JJS:bp

9404357315 3

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FEDERAL ELECTION COMMISSION
MAIL ROOM

90 JUL -2 AM 10: 35

HONG, IWAI AND HULBERT
ATTORNEYS AT LAW
SUITE 2200, PAUAHI TOWER
BISHOP SQUARE
1001 BISHOP STREET
HONOLULU, HAWAII 96813

GEORGE S. W. HONG
DONALD R. IWAI
NEIL F. HULBERT
CAROL LEE HONG
JEFFREY C. WILK
ROY R. KAWANO
HARLAN Y. KIMURA

A LAW CORPORATION

TELEPHONE
(808) 524 4900

FAX
(808) 528 5473

June 29, 1990

90 JUL -2 PM 12: 02

FEDERAL ELECTION COMMISSION
MAIL ROOM

Patty Reilly, Esq.
Michael Troy, Esq.
Staff Attorneys
Federal Election Commission
999 E Street, N.W.
Washington, D. C. 20463

Dear Counsel:

Re: Royal Hawaiian Country Club, Inc.
Y. Y. Valley Corporation
MUR2892

Reference is hereby made to the letter of May 21, 1990, from Lee Ann Elliott, Chairman of the Federal Election Commission. I still do not believe that Royal Hawaiian Country Club, Inc., and/or Y. Y. Valley Corporation have committed a violation of the Federal Election Campaign Act of 1971. However, notwithstanding the foregoing, request is hereby made that conciliation proceedings be commenced.

Very truly yours,

HONG, IWAI AND HULBERT

By Neil F. Hulbert
Neil F. Hulbert

NFH:kh

2404357314

HONG, IWAI AND HULBERT
ATTORNEYS AT LAW
SUITE 2200, PAUAHI TOWER
BISHOP SQUARE
1001 BISHOP STREET
HONOLULU, HAWAII 96813

GEORGE S. W. HONG
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ROY K. KAWANO
HARLAN Y. KIMURA

* A LAW CORPORATION

TELEPHONE
(808) 524-4900

FAX
(808) 528-5473

June 29, 1990

Patty Reilly, Esq.
Michael Troy, Esq.
Staff Attorneys
Federal Election Commission
999 E Street, N.W.
Washington, D. C. 20463

Dear Counsel:

Re: Mokuleia Land Company
MUR2892

I still have not received a written response from you granting our request for an extension of time. Nevertheless, I am responding within the time requested.

I do not believe that Mokuleia Land Company has committed a violation of the Federal Election Campaign Act of 1971. However, notwithstanding the foregoing, request is hereby made that conciliation proceedings be commenced.

Very truly yours,

HONG, IWAI AND HULBERT

By Neil F. Hulbert
Neil F. Hulbert

NFH:kh

cc: Mokuleia Land Company

2404357315

26C6820

CARLSMITH, WICHMAN, CASE, MUKAI AND ICHIKI
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING LAW CORPORATIONS
1001 BISHOP STREET
PACIFIC TOWER, SUITE 2200
HONOLULU, HAWAII 96813
CABLE ADDRESS: CWCMI
TELEX 723-8770 CWCMI HR
TELECOPIER (808) 523-0842

HONOLULU OFFICE:
P. O. BOX 656
HONOLULU, HAWAII 96809
(808) 523-2500

GUAM OFFICE
P. O. BOX 8F
AGANA, GUAM 96910
(671) 472-6813
TELEX 721-8445 CWCMI GH

LOS ANGELES OFFICE
P. O. BOX 71169
LOS ANGELES, CALIFORNIA 90071-0169
(213) 955-1200

DIRECT DIAL NUMBER:
(808) 523-2627

HILO OFFICE:
P. O. BOX 686
HILO, HAWAII 96721-0686
(808) 935-6644

KONA OFFICE:
P. O. BOX 1720
KAILUA-KONA, HAWAII 96745-1720
(808) 329-6464

MAUI OFFICE:
P. O. BOX 1086
WAILUKU, HAWAII 96793
(808) 242-4535

SAIPAN OFFICE
P. O. BOX 241 CHRB
SAIPAN, MP 96950
(670) 322-3455
TELEX 783-658 CWCMI SPN

June 26, 1990

Ms. Lee Ann Elliott, Chairman
Federal Election Commission
Washington, D. C. 20463

Dear Ms. Elliott:

Re: MUR 2892 - Kumagai Properties, Inc.

On June 14, 1990, Kumagai Properties, Inc. submitted its responses to interrogatories from the Federal Election Commission. This letter supplements the response to interrogatory number 6.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

A. The individual who participated in the making of the contributions is Mr. Takayuki Furuta, who is lawfully admitted for permanent residence in the United States.

Thank you for the opportunity to supplement our responses to interrogatories. Should you have any questions, please call the undersigned at the telephone number noted above.

Very truly yours,

Stanley D. Suyat

Stanley D. Suyat

SDS:jsi

X9022592

90 JUL -2 PM 4:44
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OFFICE OF GENERAL COUNSEL

90 JUL -2 PM 12:49
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00C 6790

PAUL, JOHNSON, ALSTON & HUNT

ATTORNEYS AT LAW A LAW CORPORATION

HONOLULU OFFICE
(808) 524 1212
Suite 1300, Pacific Tower
1001 Bishop Street
Post Office Box 4438
Honolulu, Hawaii 96812-4438
Cable: PACIFICLAW
Telex: PACLAW 634377
FAX: (808) 524 4591
FAX: (808) 528 1654

MAUI OFFICE
(808) 242 6644
101 H G L A Building
2145 Kaohu Street
Post Office Box 870
Wailuku, Hawaii 96793-0870
FAX: (808) 244 9775

June 29, 1990

VIA FAX AND U.S. MAIL

Patty Reilly, Esq.
Michael Troy, Esq.
Staff Attorneys
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Re: Tetsuo and Yasuo Yasuda, MUR 2892

Dear Counsel:

We still have not received a written response from you granting our request for an extension of time. Nevertheless, pursuant to my telephone conversation with Michael Troy, we understand that our request was granted and we are responding accordingly.

With regards to Ms. Lee Ann Elliott's letter dated May 21, 1990, we have researched the matter of a possible violation of the Federal Election Campaign Act of 1971 by Messrs. Yasuda. Based on our information, we believe that Messrs. Yasuda are not liable for any such violation. Notwithstanding our position, we hereby request that conciliation proceedings be commenced.

If you have any questions about this matter, please contact either Paul Alston or me.

Very truly yours,

Robyn B. Chun

ROBYN B. CHUN

RBC:lhc:1493N
cc: clients
Neil Hulbert, Esq.
William Schweitzer, Esq.

90 JUL -2 PM 12: 02
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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

90 JUL -2 AM 10: 37

HONOLULU James T. Paul, David A. Johnson, Paul Alston, William S. Hunt, Corey Y. S. Park, Shelby Anne Floyd, Louise K. Y. Ing, Sheryl L. Nicholson, Chad Taniguchi, Ellen Godbey Carson, Robyn B. Chun, Everett S. Kanashige, Elizabeth Kent, Mei Nakamoto, Judith L. Neustadter, Bruce S. Nobontawa
MAUI Dennis Nies, William M. McKeon, Joanne V. Louie

OGC 6799

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FEDERAL ELECTION COMMISSION

GREEN, NING, LILLY, & JONES

Attorneys at Law, A Law Corporation
707 Richards Street, Suite 700, Honolulu, Hawaii 96813
(808) 528-1100

90 JUL -2 AM 10: 29

Howard R. Green
Ke-chung Ning
Michael A. Lilly
Stephen A. Jones

Lynnette T. Oka

MAILING ADDRESS
P. O. Box 3439
Honolulu, Hawaii 96801

TELECOPIER
(808) 531-2415

June 29, 1990

90 JUL -2 PM 12: 02

Mr. Michael Troy
Federal Election Commission
Room 659
999 E Street, N.W.
Washington, D.C. 20463

Re: MURs 2846 and 2892
Friends of Frank Fasi

Dear Mr. Troy:

Pursuant to our conversation on June 22, 1990, enclosed is a copy of the answer dated August 14, 1989 and September 1, 1989. This answer contains a complete list of the contributors in the original complaint, and the status of the contributions and refunds. We believe that we have diligently responded to your investigation in compliance with the law, and request pre-probable cause conciliation and guidance.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Lynnette T. Oka

LTO
cc: Linda Wong

2 4 0 4 3 5 7 3 1 5 8

GREEN, NING, LILLY, & JONES

Attorneys at Law, A Law Corporation
707 Richards Street, Suite 700, Honolulu, Hawaii 96813
(808) 528-1100

Howard R. Green
Ke-chang Ning
Michael A. Lilly
Stephen A. Jones

Lynnette T. Oka

MAILING ADDRESS
P. O. Box 3439
Honolulu, Hawaii 96801

TELECOPIER
(808) 531-2415

August 14, 1989

Mr. George F. Rishel
Acting Associate General Counsel
Federal Election Commission
999 E. St. N.W.
Washington, D.C. 20463

Attn: Patty Reilley

Re: MUR 2846 Friends of Frank Fasi

Gentlemen:

As we have previously written you, we sent inquiries to each of the contributors identified in the complaints filed by Mr. Anthony Locricchio as contributors to the Fasi Campaign to request them to verify their status as contributors.

We have received back responses from all but three or four of the contributors with the following results. The responses can be broken into categories as follows:

Category I refers to contributions which were previously refunded by the campaign as I have identified for you in my prior letter. To recapitulate, the Category I contributions were as follows:

1. Contribution of Yasuo Yasuda in the amount of $2,000 on August 31, 1987 (Count 1).

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2. Contribution of Tetsuo Yasuda in the amount of $2,000 made on August 31, 1987 (Count 1).

3. Contribution of Eiman Yamamoto in the amount of $2,000 made on August 31, 1987 (Count 63).

4. Contribution of Itsuo Koshiba in the amount of $2,000 made on September 4, 1987 (Count 41).

5. Contribution of Hiroshi Kobayashi in the amount of $2,000 made on September 4, 1987 (Count 39).

6. Contribution of Masanori Kobayashi in the amount of $2,000 made on September 4, 1987 (Count 40).

7. Contribution of Yoshinori Hayashida in the amount of $2,000 made on September 4, 1987 (Count 32).

8. Contribution of Hirofumi Ohnishi in the amount of $2,000 made on October 5, 1987 (Count 47).

9. Contribution of Eiji Sakemoto in the amount of $2,000 made on September 30, 1987 (Count 54).

10. Contribution of Kenji Sakemoto in the amount of $2,000 made on September 30, 1987 (Count 55).

11. Contribution of Isamu Yamaguchi in the amount of $2,000 made on September 30, 1987 (Count 61).

12. Contribution of Katsumi Yamaguchi in the amount of $2,000 on September 30, 1987 (Count 62).

13. Contribution of Y.Y. Valley Corporation in the amount of $2,000 made on June 27, 1988 (Count 16).

14. Contribution of Hiroaki Fushimi in the amount of $2,000 made on September 4, 1987 (Count 26).

15. Contribution of Royal Hawaiian Country Club in the amount of $2,000 made on September 4, 1987 (Count 52).

16. Contribution of Shoichi Kaneda in the amount of $2,000 made on September 4, 1987 (Count 36).

17. Contribution of Seinosuke Yoshida in the amount of $2,000 made on August 31, 1987 (Count 67).

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18. Contribution of Minami Group (USA), Inc. in the amount of $1,000 on March 16, 1988 (Count 14).

19. Contribution of Daiei Hawaii Investments Inc. in the amount of $250 on September 11, 1987 (Count 25).

Contributions numbered 1 through 7 were returned on October 17, 1988. Contributions numbered 8 through 12 were returned on September 1, 1988. Contributions 13 through 17 were returned on October 17, 1988. Contributions 18 and 19 were recently refunded at the contributors request after receiving correspondence from the Federal Election Commission.

Category II includes contributions for which responses to our letter of inquiry were by telephone or in writing satisfied us that the contribution had not been made by or through a foreign national. With respect to Category II contributions, we are advising the Campaign to retain these moneys. Because of vacation schedule, the individuals who received a number of the communications departed without making appropriate affidavits relating to those communications. We will supplement this response immediately after the first of September with affidavits from our law office personnel. The Category II contributors are the following:

1. Contribution of Azabu Realty, Inc. in the amount of $2,000 made on August 2, 1988 (Count 6).

2. Contribution of CPB PAC-State in the amount of $500 made on October 17, 1988 (Count 4).

3. Contribution of Grosvernor International (Hawaii) Ltd. in the amount of $500 made on September 4, 1987 (Count 28).

4. Contribution of Hachidai USA, Inc. dba Coconut Island Properties in the amount of $2,000 made on March 16, 1988 (Count 10).

5. Contribution of Halekulani Corporation in the amount of $2,000 on December 20, 1988 (Count 2) and $2,000 on September 4, 1987 (Count 29).

6. Contribution of Hasegawa Komuten, Inc. in the amount of $250 made on August 4, 1987 (Count 30).

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7. Contribution of Hawaii Sekitei Corp. in the amount $1,000 made on August 24, 1987 (Count 31).

8. Contribution of Jet Hawaii, Inc. in the amount of $250 made on June 13, 1988 (Count 12); aggregate total of $500; and $250 made on September 14, 1987 (Count 35).

9. Contribution of Kauai Island Tours, Inc. in the amount of $250 made on June 13, 1988 (Count 13); for aggregate total of $750; and $500 made on September 14, 1987 (Count 37).

10. Contribution of Leyton House, Inc. in the amount of $500 made on September 4, 1987 (Count 42).

11. Contribution of Longevity International Enterprises Corp. in the amount of $250 made on September 4, 1987 (Count 68).

12. Contribution of Love's Bakery in the amount of $250 made on October 5, 1987 (Count 43).

13. Contribution of New Tokyo-Hawaii Restaurant Co., Ltd. in the amount of $500 made on September 4, 1987 (Count 45).

14. Contribution of Ohbayashi Hawaii Corporation in the amount of $1,000 made on September 12, 1988 (Count 5) and $1,000 made on August 24, 1987 (Count 46).

15. Contribution of Otaka, Inc. in the amount of $750 made on December 30, 1988; aggregate total of $2,750; $1,250 on August 2, 1988 for aggregate total of $2,000 (Count 20/21).

16. Contribution of Pacifico Creative Service in the amount of $500 made on September 4, 1987 (Count 48).

17. Contribution of Pan-Pacific Construction, Inc. in the amount of $1,500 made on March 16, 1988 (Count 18) and $500 made on August 2, 1988 (Count 19).

18. Contribution of Plaza Hotel in the amount of $2,000 made on September 14, 1987 (Count 50).

9 4 0 4 3 5 7 3 1 6 2

19. Contribution of Saab-Scania of America, Inc. in the amount of $2,000 made on September 8, 1987 (Count 53).

20. Contribution of S.I.U. of N.A. in the amount of $500 made on December 30, 1988 (Count 3).

21. Contribution of Servco Pacific, Inc. in the amount of $250 made on August 20, 1987 (Count 56).

22. Contribution of Yokohama Okadaya Corp. in the amount of $100 made on July 6, 1988 (Count 17) and $500 made on August 31, 1987 (Count 66); aggregate amount of $600.

Category III contributions include those we have not been able to obtain adequate information even though they are available to us. We are advising the Campaign to refund all Category III contributions. Those refunds will be effected within the next two weeks and as soon as they have been, we will provide you with affidavits to that effect. The Category III contributions are as follows:

1. Contribution of All Nippon Airways in the amount of $500 made on July 27, 1987 (Count 24).

2. Contribution of ANA Hallo Tours in the amount of $250 made on July 27, 1987 (Count 22).

3. Contribution of ANA Hotels Hawaii, Inc. in the amount of $500 made on July 27, 1987 (Count 23).

4. Contribution of Coordination Council for North American Affairs in the amount of $250 (Count 7).

5. Contribution of Daiei Hawaii Investments, Inc. in the amount of $100 made on March 16, 1988; aggregate total of $350 (Count 8).

6. Contribution of International Commercial Bank of China in the amount of $500 made on September 4, 1987 (Count 33).

7. Contribution of Kintetsu International Express in the amount of $250 made on September 14, 1987 (Count 38).

8. Contribution of Mokuleia Land Co. in the amount of $2,000 made on September 14, 1987 (Count 44).

9404357316 3

9. Contribution of Pearl City Country Club in the amount of $250 made on August 24, 1987 (Count 49).

10. Contribution of Queen Kapiolani Hotel in the amount of $250 made on October 5, 1987 (Count 51).

11. Contribution of Royal Country Club in the amount of $2,000 made on August 31, 1987 (Count 65).

12. Contribution of Sony Hawaii in the amount of $300 made on July 6, 1988 (Count 15) and $500 made on September 8, 1987 (Count 57).

13. Contribution of Taiyo Hawaii Co. in the amount of $250 made on September 4, 1987 (Count 58).

14. Contribution of Tobishima Pacific, Inc. in the amount of $250 made on September 4, 1987 (Count 59).

15. Contribution of Universal Express in the amount of $500 made on July 28, 1987 (Count 60).

16. Contribution of Seinosuke Yoshida in the amount of $1,000 made on August 2, 1988; aggregate total of $2,000 (Count 9).

17. Contribution of Y.Y. Valley Corporation in the amount of $2,000 made on August 31, 1987 (Count 64).

Category IV contributors include those contributors on whom we are unable to obtain information because they wanted to deal directly with the Federal Election Commission themselves and, therefore, determinations with respect to their individual status cannot be made by us. We request that you advise us as to your evaluations with regards to the Category IV contributors so that we can determine to either retain the funds or pay them back. The Category IV contributions are the following:

1. Contribution of Gem Political Action Committee in the amount of $1,000 made on August 4, 1987 (Count 27).

2. Contribution of Japan Travel Bureau International, Inc. in the amount of $2,000 made on September 4, 1987 (Count 34).

Category V included one contributor whom we are unable to locate. We are not able to either ascertain the status of the

9404357316 4

individual or to return the money because we cannot find him. The Category V contributor is the following:

1. Contribution of Michisaburo Hayashi in the amount of $250 made on March 16, 1988 (Count 11).

I hope that the foregoing appropriately responds to the Commission's concerns with regard to the important issues raised here. Should the Commission have any questions with regards to the facts we have set forth or with the actions we have taken or propose to take, we would appreciate the opportunity to further discuss the matter to arrive at a conclusion completely acceptable to the Commission.

Sincerely,

Howard R. Green

HOWARD R. GREEN

HRG:rsh

2404357316 5

GREEN, NING, LILLY, & JONES

Attorneys at Law, A Law Corporation
707 Richards Street, Suite 700, Honolulu, Hawaii 96813
(808) 528-1100

Howard R. Green
Ke-ching Ning
Michael A. Lilly
Stephen A. Jones

Lynnette T. Oka

MAILING ADDRESS
P. O. Box 3439
Honolulu, Hawaii 96801

TELECOPIER
(808) 531-2415

September 1, 1989

Mr. George F. Rishel
Acting Associate General Counsel
Federal Election Commission
999 E. St. N.W.
Washington, D.C. 20463

Attn: Patty Reilley

Re: MUR 2846 Friends of Frank Fasi

Gentlemen:

Pursuant to the letter of August 14, 1989 of Howard R. Green, enclosed is my affidavit with attached exhibits.

We are recapitulating the information once again in this letter in order to make the data easier for you to follow. In our August 14, 1989 letter, the contributions in each category were not in the order as the complaint. Additionally, in Count 23, the contribution amount was incorrect. The correct amount, stated in the complaint, being $250,00.

The following is a recapitulation of each category.

Category I (previously refunded contributions):

Count 14: Contribution of Minami Group (USA), Inc. in the amount of $1,000 on March 16, 1988 (Exhibit 1).

Count 16: Contribution of Y.Y. Valley Corporation in the amount of $2,000 made on June 27, 1988: Refunded on October 17, 1988 (Exhibit 2).

9404357316 6

Count 25: Contribution of Daiei Hawaii Investments Inc. in the amount of $250 on September 11, 1987: (Exhibit 3).

Count 26: Contribution of Hiroaki Fushimi in the amount of $2,000 made on September 4, 1987: Refunded on October 17, 1988 (Exhibit 4).

Count 32. Contribution of Yoshinori Hayashida in the amount of $2,000 made on September 4, 1987: Refunded on October 17, 1988 (Exhibit 5).

Count 36: Contribution of Shoichi Kaneda in the amount of $2,000 made on September 4, 1987: Refunded on October 17, 1988 (Exhibit 6).

Count 39: Contribution of Hiroshi Kobayashi in the amount of $2,000 made on September 4, 1987: Refunded on October 17, 1988 (Exhibit 7).

Count 40: Contribution of Masanori Kobayashi in the amount of $2,000 made on September 4, 1987: Refunded on October 17, 1988 (Exhibit 8).

Count 41: Contribution of Itsuo Koshiba in the amount of $2,000 made on September 4, 1987: Refunded on October 17, 1988 (Exhibit 9).

Count 47: Contribution of Hirofumi Ohnishi in the amount of $2,000 made on October 5, 1987: Refunded on September 1, 1988 (Exhibit 10).

Count 52: Contribution of Royal Hawaiian Country Club in the amount of $2,000 made on September 4, 1987: Refunded on October 17, 1988 (Exhibit 11).

Count 54: Contribution of Eiji Sakemoto in the amount of $2,000 made on September 30, 1987: Refunded on September 1, 1988 (Exhibit 12).

Count 55: Contribution of Kenji Sakemoto in the amount of $2,000 made on September 30, 1987: Refunded on September 1, 1988 (Exhibit 13).

Count 61: Contribution of Isamu Yamaguchi in the amount of $2,000 made on September 30, 1987: Refunded on September 1, 1988 (Exhibit 14).

9 4 0 4 3 5 7 3 1 6 7

Count 62: Contribution of Katsumi Yamaguchi in the amount of $2,000 on September 30, 1987: Refunded on September 1, 1988 (Exhibit 15).

Count 63: Contribution of Eiman Yamamoto in the amount of $2,000 made on August 31, 1987: Refunded on October 17, 1988 (Exhibit 16).

Count 64: Contribution of Tetsuo Yasuda in the amount of $2,000 made on August 31, 1987, also referred to in Count 1: Refunded on October 17, 1988 (Exhibit 2).

Count 65: Contribution of Yasuo Yasuda in the amount of $2,000 on August 31, 1987, also referred to in Count 1: Refunded on October 17, 1988 (Exhibit 1).

Count 67: Contribution of Seinosuke Yoshida in the amount of $2,000 made on August 31, 1987: Refunded on October 17, 1988 (Exhibit 17).

Category II (telephone conversation or letter writing satisfied us that the contribution had not been made by or through a foreign national):

Count 2: Contribution of Halekulani Corporation in the amount of $2,000 on December 20, 1988.

Count 3: Contribution of S.I.U. of N.A. in the amount of $500 made on December 30, 1988.

Count 4: Contribution of CPB PAC-State in the amount of $500 made on October 17, 1988.

Count 5: Contribution of Ohbayashi Hawaii Corporation in the amount of $1,000 made on September 12, 1988.

Count 6: Contribution of Azabu Realty, Inc. in the amount of $2,000 made on August 2, 1988.

Count 10: Contribution of Hachidai USA, Inc. dba Coconut Island Properties in the amount of $2,000 made on March 16, 1988.

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Count 12: Contribution of Jet Hawaii, Inc. in the amount of $250 made on June 13, 1988, aggregate total of $500.

Count 13: Contribution of Kauai Island Tours, Inc. in the amount of $250 made on June 13, 1988; for aggregate total of $750.

Count 17: Contribution of Yokohama Okadaya Corp. in the amount of $100 made on July 6, 1988.

Count 18: Contribution of Pan-Pacific Construction, Inc. in the amount of $1,500 made on March 16, 1988.

Count 19: Contribution of Pan-Pacific Construction, Inc. in the amount of $500 made on August 2, 1988.

Count 20: Contribution of Otaka, Inc. in the amount of $750 made on December 30, 1988.

Count 21: Contribution of Otaka, Inc. in the amount of $1,250 on August 2, 1988.

Count 28: Contribution of Grosvernor International (Hawaii) Ltd. in the amount of $500 made on September 4, 1987.

Count 29: Contribution of Halekulani Corporation in the amount of $2,000 on September 4, 1987.

Count 30: Contribution of Hasegawa Komuten, Inc. in the amount of $250 made on August 4, 1987.

Count 31: Contribution of Hawaii Sekitei Corp. in the amount $1,000 made on August 24, 1987.

Count 35: Contribution of Jet Hawaii, Inc. in the amount of $250 made on September 14, 1987.

Count 37: Contribution of Kauai Island Tours, Inc. in the amount of $500 made on September 14, 1987.

Count 42: Contribution of Leyton House, Inc. in the amount of $500 made on September 4, 1987.

Count 43: Contribution of Love's Bakery in the amount of $250 made on October 5, 1987.

9404357316 9

Count 45: Contribution of New Tokyo-Hawaii Restaurant Co., Ltd. in the amount of $500 made on September 4, 1987.

Count 46: Contribution of Ohbayashi Hawaii Corporation in the amount of $1,000 made on August 24, 1987.

Count 48: Contribution of Pacifico Creative Service in the amount of $500 made on September 4, 1987.

Count 50: Contribution of Plaza Hotel in the amount of $2,000 made on September 14, 1987.

Count 53: Contribution of Saab-Scania of America, Inc. in the amount of $2,000 made on September 8, 1987.

Count 56: Contribution of Servco Pacific, Inc. in the amount of $250 made on August 20, 1987.

Count 66: Contribution of Yokohama Okadaya Corp. in the amount of $500 made on August 31, 1987.

Count 68: Contribution of Longevity International Enterprises Corp. in the amount of $250 made on September 4, 1987.

Category III (refunds made due to inadequate information):

Count 7: Contribution of Coordination Council for North American Affairs in the amount of $250: Refunded on August 25, 1989 (Exhibit 18).

Count 15: Contribution of Sony Hawaii in the amount of $300 made on July 6, 1988: Refunded on August 25, 1989 (Exhibit 19).

Count 22: Contribution of ANA Hallo Tours in the amount of $250 made on July 27, 1987: Refunded on August 25, 1989 (Exhibit 20).

Count 23: Contribution of ANA Hotels Hawaii, Inc. in the amount of $250 made on July 27, 1987: Refunded on August 25, 1989 (Exhibit 21).

Count 24: Contribution of All Nippon Airways in the amount of $500 made on July 27, 1987: Refunded on August 25, 1989 (Exhibit 22).

Count 33: Contribution of International Commercial Bank of China in the amount of $500 made on September 4, 1988: Refunded on August 25, 1989 (Exhibit 23).

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Count 38: Contribution of Kintetsu International Express in the amount of $250 made on September 14, 1987: Refunded on August 25, 1989 (Exhibit 24).

Count 44: Contribution of Mokuleia Land Co. in the amount of $2,000 made on September 14, 1987: Refunded on August 25, 1989 (Exhibit 25).

Count 49: Contribution of Pearl City Country Club in the amount of $250 made on August 24, 1987: Refunded on August 25, 1989 (Exhibit 26).

Count 51: Contribution of Queen Kapiolani Hotel in the amount of $250 made on October 5, 1987: Refunded on August 25, 1989 (Exhibit 27).

Count 57: Contribution of Sony Hawaii in the amount of $500 made on September 8, 1987: Refunded on August 25, 1989 (Exhibit 19).

Count 58: Contribution of Taiyo Hawaii Co. in the amount of $250 made on September 4, 1987: Refunded on August 25, 1989 (Exhibit 28).

Count 59: Contribution of Tobishima Pacific, Inc. in the amount of $250 made on September 4, 1987: Refunded on August 25, 1989 (Exhibit 29).

Count 60: Contribution of Universal Express in the amount of $500 made on July 28, 1987: Refunded on August 25, 1989 (Exhibit 30).

Category IV (unable to obtain information because contributors wanted to deal directly with the Federal Election Commission themselves):

Counts 9 & 27: Contributions of Gem Political Action Committee in the amount of $1,000 made on August 2, 1987 and $1,000 made on August 4, 1987.

Count 34: Contribution of Japan Travel Bureau International, Inc. in the amount of $2,000 made on September 4, 1987.

Category V (unable to locate contributor):

2 4 0 4 3 5 7 3 1 7 1

Count 11: Contribution of Michisaburo Hayashi in the amount of $250 made on March 16, 1988.

Sincerely,

Lynnette T. Oka

9404357317 2

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

No. 335

59-105/1213

Oct. 17, 1988

PAY TO THE ORDER OF Y. Y. Valley Corporation $ 2,000.00

*****Two Thousand and no/100***** DOLLARS

Mililani Branch
Liberty Bank
2365 Kuala St. Hon., HI 96819

Gina M. Fasi

FOR Return Contribution

⑆121301057⑆ 13-003505 ⑈0000200000⑈

24435731/3

EXHIBIT 2

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

No. 336

59-105/1213

Oct. 17, 1988

PAY TO THE ORDER OF Hiroaki Fushimi $ 2,000.00

*****Two Thousand and no/100***** DOLLARS

Moanalua Branch
Liberty Bank
2666 Pali Hwy. Honolulu, HI 96819

Gina M. Fasi

FOR Return Contribution

⑆121301057⑆ 13-003505 ⑈0000200000⑈

EXHIBIT

EXHIBIT 4

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

(7) Exhibit D-4 p.42
Feb. 2, 1992 Letter

No. 347

59-105/1213

Oct. 17, 1988

PAY TO THE ORDER OF Yoshinori Hayashida $ 2,000.00

*****Two Thousand and no/100***** DOLLARS

Manoa Branch
Liberty Bank
2606 Pali H Hon, HI 96819

Jon M. Fasi

Return Contribution

⑆121301057⑆ 13-003509 ⑈0000200000⑈

EXHIBIT 5

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

No. 337

58-105/1213

Oct. 17, 1988

PAY TO THE ORDER OF Shoichi Kaneda $ 2,000.00

*****Two Thousand and no/100***** DOLLARS

Waipahu Branch
Liberty Bank
2385 Paa St. Honolulu, Hi 96819

Gina M. Fasi

FOR Return Contribution

⑆121301057⑆ 13-003505 ⑈0000200000⑈

2 4 0 4 3 5 7 3 1 1 / 6

EXHIBIT 6

FRIENDS FOR FA[illegible]
100 N. BERETANIA ST., NO. 3[illegible]
HONOLULU, HI 96817

(5) Exhibit D-[illegible] in Feb. 2, 1989 letter. Exhibit 1, [illegible] packet Feb. 24, 1989

No. 345

Oct. 17, 1988

PAY TO THE ORDER OF Hiroshi Kobayashi $ 2,000.00

*****Two Thousand and no/100***** DOLLARS

Mililani Branch
Liberty Bank
[illegible] Honolulu, HI 96817

FOR Return Contribution

⑆121301057⑆ 13-003505 ⑈0000200000⑈

9404357317 7

EXHIBIT 37

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

(6) see 5

No. 346

58-105/1213

Oct. 17, 1988

PAY TO THE ORDER OF Masanori Kobayashi $ 2,000.00

*****Two Thousand and 00/100*****[redacted] DOLLARS

Magnolia Branch
Liberty Bank
2600 Pali H Hon, HI 96819

Gene M. Fasi

FOR Return Contribution

⑆121301057⑆ 13-003505⑈ ⑈0000200000⑈

EXHIBIT 8

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

No. 338

Oct. 17, 1988

PAY TO THE ORDER OF Itsuo Koshiba $ 2,000.00

*****Two Thousand and no/100*****

DOLLARS

Magnolia Branch
Liberty Bank

Gina M. Fasi

FOR Return Contribution

⑆121301057⑆ 13-003505 ⑈0000200000⑈

EXHIBIT 9

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 303
HONOLULU, HI 96817

No. 272

50-105/1213

Sept. 1, 1988

PAY TO THE ORDER OF Hirofumi Ohnishi $ 2,000.00

*****Two Thousand and no/100****** DOLLARS

Honolulu Branch
Liberty Bank
2865 Koa St. Honolulu, HI 96817

Gina M. Fasi

FOR Return Contribution

⑆121301057⑆ 13-003505⑈ ⑈0000200000⑈

2404357313 0

EXHIBIT 10

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 505
HONOLULU, HI 96817

No. 334

Oct. 17, 1988

PAY TO THE ORDER OF Royal Hawaiian Country Club $ 2,000.00

*****Two Thousand and no/100***********DOLLARS

Gina Mafazi

Liberty Bank

FOR Return Contribution

⑆121301057⑆ 13-003509 ⑈0000200000⑈

24043573181

EXHIBIT 11

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

No. 273

59-105/1213

Sept. 1, 19 88

PAY TO THE ORDER OF Eiji Sakamoto $ 2,000.00

*****Two Thousand and no/100***** DOLLARS

--PROCESSED--CASH DEPOSIT

Gina M. Fan

Magnolia Branch
2005 Pali Hwy. Hon., HI 96819

FOR Return Contribution

⑆121301057⑆ 13⑈003505⑈ ⑈0000200000⑈

9 4 0 4 3 5 7 3 1 3 2

EXHIBIT 12

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

No. 274

Sept. 1, 1988

PAY TO THE ORDER OF Kenji Sakemoto $ 2,000.00

*****Two Thousand and no/100 DOLLARS

PROCESSED

Gina M Fasi

Moanalua Branch
Liberty Bank

FOR Return Contribution

⑆121301057⑆ 13-003505⑈ ⑈0000200000⑈

EXHIBIT 13

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

No. 275

59-105/1213

Sept. 1, 1988

PAY TO THE ORDER OF Isamu Yamaguchi $ 2,000.00

*****Two Thousand and no/100***** DOLLARS

PROCESSED LOS ANGELES

Moanalua Branch
Liberty Bank
2885 Poa St Hon, HI 96819

Gina M Fasi

FOR Return Contribution

⑆121301057⑆ 13-003505⑈ ⑈0000200000⑈

0435573

PAY TO THE ORDER

FOR

EXHIBIT 14

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

No. 276

59-105/1213

Sept. 1, 19 88

PAY TO THE ORDER OF Katsumi Yamaguchi $ 2,000.00

*****Two Thousand and no/100***** DOLLARS

--PAYEE'S ENDORSEMENT--

Gina M. Fan

Moanalua Branch
Liberty Bank
2885 Paa St Hon, HI 96819

FOR Return Contribution

⑆121301057⑆ 13-003505⑈ ⑈0000200000⑈

9404359731

EXHIBIT 15

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

(3)

No. 339

Oct. 17, 1988

PAY TO THE ORDER OF Eiman Yamamoto $ 2,000.00

*****Two Thousand and no/100***** DOLLARS

Mililani Branch
Liberty Bank

Gina M. Fasi

FOR Return Contribution

⑆121301057⑆ 13-003505⑈ ⑈0000200000⑈

EXHIBIT D

EXHIBIT 16

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 200
HONOLULU, HI 96817

(2) No. 340

Oct. 17, 1988

PAY TO THE ORDER OF Tetsuo Tasuda $ 2,000.00

*****Two Thousand and no/100*****

DOLLARS

Liberty Bank

FOR Return Contribution

Gene Ma Fasi

⑆121301057⑆ 13-003505 ⑈0000200000⑈

9404357731187

EXHIBIT 16a

(1).

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 309
HONOLULU, HI 96817

No. 341

Oct. 17, 1988

PAY TO THE ORDER OF Yasuo Tasuda $ 2,000.00

*****Two Thousand and no/100***** DOLLARS

Mauka Branch
Liberty Bank
2888 Pali Hwy Honolulu, HI 96819

FOR Return Contribution

⑆121301057⑆ 13-003505⑈ ⑈0000200000⑈

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EXHIBIT 16 b

FRIENDS FOR FASI
100 N. BERETANIA ST., NO.
HONOLULU, HI 96817

No. 342

BP-105/1213

Oct. 17, 1988

PAY TO THE ORDER OF Seinosuke Yoshida $ 2,000.00

*****Two Thousand and no/100***********DOLLARS

Hawaiian Trust
Liberty Bank
2005 Fort St. Honolulu, HI 96819

Gina M. Fasi

FOR Return Contribution

⑆121301057⑆ 13-003505⑈ /0000200000/

EXHIBIT

7404357731139

EXHIBIT 17

COUNT 7

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

No. 76

59-105/1213

Aug. 25, 1989

PAY TO THE ORDER OF Coordination Council For North American Affairs $ 250.00

*****Two Hundred Fifty and no/100***** DOLLARS

Manoa Branch
Liberty Bank
1585 Pali H Honl, HI 96819

Gina M. Fasi

FOR Return Contribution

⑆121301057⑆ 13⑈003505⑈

2404357 31 2 7 0

EXHIBIT 18

COUNTS 15 & 57

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

No. 82

Aug. 25, 1989

PAY TO THE ORDER OF Sony Hawaii Co. $ 800.00

*****Eight Hundred and no/100***** DOLLARS

Honolulu Branch
Liberty Bank
1088 Nuuanu Ave. Honolulu, HI 96819

FOR Return Contribution

John M. Fasi

⑆121301057⑆ 13-003505

EXHIBIT 19

COUNT 22

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 303
HONOLULU, HI 96817

No. 74

39-105/1213

Aug. 25, 1989

PAY TO THE ORDER OF ANA Hallo Tours (USA) Inc. $ 250.00

***** Two Hundred Fifty and no/100***** DOLLARS

Honolulu Branch
Liberty Bank
2506 Pali Hwy Honolulu, HI 96819

Gina M. Fair

FOR Return Contribution

⑆121301057⑆ 13-003509

9404357 3192

EXHIBIT 20

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

AGGREGATE CONTRIBUTIONS OVER $100

Page 1 of

NAME OF CANDIDATE, COMMITTEE OR PARTY
FRIENDS FOR FASI

DATE RECEIVED 1987	NAME AND ADDRESS OF DONOR	OCCUPATION / IF A MINOR, ENTER NAME OF PARENT	(COLUMN 1) AMOUNT OF THIS CASH CONTRIBUTION	(COLUMN 2) VALUE OF THIS IN-KIND CONTRIBUTION / DESCRIPTION	(COLUMN 3) AGGREGATE TOTALS FROM DONOR
8/29	A'A Party Supplies 753-D Halekauwila St Honolulu 96814			132 Chafing Dishes	132
8/17	A&B HIPAC P.O. Box 3440 Honolulu 96801		1,000		1,000
10/26	ABC Glass Co Inc 99-1096 Iwaena St Unit B&C Aiea 96701		250		250
9/4	AM Partners Inc 1164 Bishop Street Suite 1003 Honolulu 96813		250		250
9/4	AMSCO 4341 Lawehana St Honolulu 96818		250		250
7/27	ANA Hallo Tours (USA) Inc 2255 Kuhio Avenue Suite 1025 Honolulu 96815		250		250
7/27	ANA Hotels Hawaii Inc. P. O. Box 896 Waianae, Hawaii 96792		250		250
8/24	A-1 A-lectrician Inc 2849 Kaihikapu St Honolulu 96819		500		500
9/14	A-1 Roofing Inc 424 Hunter Way, S.I. Honolulu 96819		500		500
8/24	A.Y. Refrigeration 1635 Oo Lane Honolulu 96817		250		250
8/24	ABE, Ernest 98-1712-B Kaahumanu St Pearl City 96782		1,500		1,500
			TOTAL COLUMN 1	TOTAL COLUMN 2	NOTE: IN-KIND CONTRIBUTIONS ARE ALSO EXPENDITURES WHEN USED

1. SUBTOTAL of Contributions Over $100 This Page .....
2. TOTAL This Period (last page this line only) .....

9 4 0 4 3 5 7 3 1 9 3

COUNT 23

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 202
HONOLULU, HI 96817

No. 75

59-105/1213

Aug. 25, 1989

PAY TO THE ORDER OF ANA Hotels Hawaii Inc. $ 250.00

*****Two Hundred Fifty and no/100***** DOLLARS

Liberty Bank

FOR Return Contribution

⑆121301057⑆ 13-003505

EXHIBIT 21

STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION

AGGREGATE CONTRIBUTIONS OVER $100

NAME OF CANDIDATE, COMMITTEE OR PARTY
FRIENDS FOR FASI

DATE RECEIVED 1987	NAME AND ADDRESS OF DONOR	OCCUPATION / IF A MINOR, ENTER NAME OF PARENT	(COLUMN 1) AMOUNT OF THIS CASH CONTRIBUTION	(COLUMN 2) VALUE OF THIS IN-KIND CONTRIBUTION / DESCRIPTION	(COLUMN 3) AGGREGATE TOTALS FROM DONOR
8/29	A'A Party Supplies 753-D Halekauwila St Honolulu 96814			132 Chafing Dishes	132
8/17	A&B HIPAC P.O. Box 3440 Honolulu 96801		1,000		1,000
10/26	ABC Glass Co Inc 99-1096 Iwaena St Unit B4C Aiea 96701		250		250
9/4	AM Partners Inc 1164 Bishop Street Suite 1003 Honolulu 96813		250		250
9/4	AMSCO 4341 Lawehana St Honolulu 96818		250		
7/27	ANA Hallo Tours (USA) Inc 2255 Kuhio Avenue Suite 1025 Honolulu 96815		250		
7/27	ANA Hotels Hawaii Inc. P. O. Box 896 Waianae, Hawaii 96792		250		
8/24	A-1 A-lectrician Inc 2849 Kaihikapu St Honolulu 96819		500		
9/14	A-1 Roofing Inc 424 Hunter Way, S.I. Honolulu 96819		500		500
8/24	A.Y. Refrigeration 1635 Oo Lane Honolulu 96817		250		250
8/24	ABE, Ernest 98-1712-B Kaahumanu St Pearl City 96782		1,500		1,500
			TOTAL COLUMN 1:	TOTAL COLUMN 2	NOTE: IN-KIND CONTRIBUTIONS ARE ALSO EXPENDITURES WHEN USED

1. SUBTOTAL of Contributions Over $100 This Page .....
2. TOTAL This Period (last page this line only) .....

EXHIBIT #21

2404357319 5

COUNT 24

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

No. 73

59-105/1213

Aug. 25, 1989

PAY TO THE ORDER OF All Nippon Airways Co., Ltd. $ 500.00

*****Five Hundred and no/100***** DOLLARS

Honolulu Branch
Liberty Bank
1088 Fort St. Honolulu, HI 96819

FOR Return Contribution

Gene M Fasi

⑆121301057⑆ 13⑈003505⑈

2 4 0 4 3 5 7 3 1 2 1 6

EXHIBIT 22

COUNT 33

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

No. 77

59-105/1213

Aug. 25, 19 89

PAY TO THE ORDER OF International Commercial Bank of China $ 500.00

*****Five Hundred and no/100*****

DOLLARS

Moanalua Branch
Liberty Bank
2885 Koa St. Hon., Hi 96819

Gine M. Fasi

FOR Return Contribution

⑆121301057⑆ 13-003505⑈

2 4 2 4 3 5 7 3 1 9 7

EXHIBIT 23

COUNT 38

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

No. 78

98-105/1213

Aug. 25, 1989

PAY TO THE ORDER OF Kintetsu International Express $ 250.00

*****Two Hundred Fifty and no/100***** DOLLARS

Mililani Branch
Liberty Bank
2445 Kapi'olani Blvd., Hon., Hi 96815

Gina M. Fasi

FOR Return Contribution

⑆121301057⑆ 13-003505⑈

2 4 0 4 3 5 7 3 1 2 8

EXHIBIT 24

COUNT 44

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

No. 79

59-105/1213

Aug. 25, 1989

PAY TO THE ORDER OF Mokuleia Land Co. $ 2000.00

*****Two Thousand and no/100***** DOLLARS

Honolulu Branch
Liberty Bank
2665 Kalakaua Ave. Honolulu, HI 96815

FOR Return Contribution

⑆121301057⑆ 13-003505

Gina M Fasi

2404357319

EXHIBIT 25

COUNT 49

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

No. 80

59-105/1213

Aug. 25, 1989

PAY TO THE ORDER OF Pearl Country Club of Hawaii $ 250.00

*****Two Hundred Fifty and no/100***** DOLLARS

Honolulu Branch
Liberty Bank
1865 Koa St. Honl. HI 96819

Gene M. Fasi

FOR Return Contribution

⑆121301057⑆ 13-003505

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EXHIBIT 26

COUNT 51

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

No. 81

59-105/1213

Aug. 25, 1989

PAY TO THE ORDER OF Queen Kapiolani Hotel $ 250.00

*****Two Hundred Fifty and no/100*****

DOLLARS

Mililani Branch
Liberty Bank
2585 Kuahelani Ave., Mililani, HI 96789

Gine M. Fasi

FOR Return Contribution

⑆121301057⑆ 13⑈003505⑈

24043573 2

EXHIBIT 27

COUNT 58

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

No. 83

59-105/1213

Aug. 25, 1989

PAY TO THE ORDER OF Taiyo Hawaii Co., Ltd. $ 250.00

*****Two Hundred Fifty and no/100*****

DOLLARS

Magnetic Signature
Liberty Bank
1585 Kapiolani Blvd. Honolulu, HI 96814

FOR Return Contribution

⑆121301057⑆ 13-003505

Gina M. Fasi

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EXHIBIT 28

COUNT 59

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

No. 84

59-105/1213

Aug. 25, 1989

PAY TO THE ORDER OF Tobishima Pacific, Inc. $ 250.00

*****Two Hundred Fifty and no/100*****

DOLLARS

Honolulu Branch
Liberty Bank
1865 Kalakaua Ave. Honolulu, HI 96815

FOR Return Contribution

⑆121301057⑆ 13-003505

Gina M. Fasi

240435732003

EXHIBIT 29

COUNT 60

FRIENDS FOR FASI
100 N. BERETANIA ST., NO. 203
HONOLULU, HI 96817

No. 85

59-105/1213

Aug. 25, 1989

PAY TO THE ORDER OF Universal Express Co. (Hawaii), Ltd. $ 500.00

*****Five Hundred and no/100*****

DOLLARS

Honolulu Branch
Liberty Bank
1885 Koa St. Hon. HI 96819

FOR Return Contribution

John M. Fasi

⑆121301057⑆ 13⑈003505⑈

24043573204

EXHIBIT 30

AFFIDAVIT OF LYNNETTE T. OKA

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

LYNNETTE T. OKA, being first duly sworn on oath, deposes and states:

1. I am an attorney with the law firm of Green, Ning, Lilly, and Jones. Although of Japanese ancestry, I was born and raised in Hawaii, attended the University of Hawaii Law School, and began work with the firm in May, 1988. The firm has been engaged to evaluate, advise and represent the City and County and Frank Fasi with respect to complaints made to the FEC.

2. On July 14, 1989, [we] the law firm of Green, Ning, Lilly and Jones, on behalf of Frank Fasi and Friends for Fasi, sent out a letter to each of the contributors named in the Complaint by Anthony Locricchio, in order to make a determination regarding the status of each of the contributors. Within the law firm it has been my function to receive and evaluate responses to the letter.

3. The attached exhibits are to the best of the knowledge of the undersigned true and correct copies of the documents referred to herein.

4. Regarding the contribution by Halekulani Corporation in the amount of $2,000 on December 20, 1988 (Count 2): Morio Omori, attorney for Halekulani Corporation, sent us a letter dated July 24, 1989, enclosing their response to the FEC that

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their contributions were not made by or through a foreign national, attached hereto as Exhibit A.

5. Regarding the contribution of S.I.U. of N.A. in the amount of $500 made on December 30, 1988 (Count 3): Stanford Dubin, attorney for S.I.U. of N.A., sent us a letter dated July 18, 1989, enclosing their response to the FEC that their contribution was not made by or through a foreign national, attached hereto as Exhibit B.

6. Regarding the contribution by CPB PAC-State in the amount of $500 made on October 17, 1988 (Count 4): Stanley D. Suyat, the attorney for CPB PAC-State informed me in a telephone conversation on August 1, 1989, that (1) the contribution made by CPB PAC-State was not a contribution by or through a foreign national; (2) CPB PAC-State is a Hawaii corporation with its principal place of business in Hawaii at 220 South King Street, Honolulu, Hawaii; (3) the money contributed came from income made in Hawaii; and (4) the decision was made locally, by a person who is not a foreign national.

7. Regarding the contributions by Ohbayashi Hawaii Corporation in the amount of $1,000 made on September 12, 1988 (Count 5): Kevin S.C. Chang, attorney for Ohbayashi Hawaii Corporation, informed me in a telephone conversation on July 31, 1989, that (1) the contributions made by Ohbayashi Hawaii Corporation were not contributions by or through a foreign national; (2) Ohbayashi Hawaii Corporation is a Hawaii corporation with its principal place of business in Hawaii at

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1001 Bishop Street, Suite 2680, Honolulu, Hawaii; and (3) the decision to make the contributions were made by Toshi Haru Hino, holder of a green card, who was following the advice of Norman Quon who is an American citizen, and a longtime local resident and architect.

8. Regarding the contribution by Azabu Realty, Inc. in the amount of $2,000 made on August 2, 1988 (Count 6): Raymond Iwamoto, attorney for Azabu Realty, Inc., sent us a letter dated July 18, 1989, enclosing their response to the FEC that their contribution was not made by or through a foreign national, attached hereto as Exhibit C.

9. Regarding the contribution by Hachidai USA, Inc. dba Coconut Island Properties in the amount of $2,000 made on March 16, 1988 (Count 10): Alan K. Maeda, attorney for Hachidai USA, Inc. dba Coconut Island Properties, informed me in a telephone conversation on August 1, 1989, that (1) the contribution made by Hachidai USA, Inc. dba Coconut Island Properties was not a contribution by or through a foreign national; (2) Hachidai USA, Inc. dba Coconut Island Properties is a Hawaii corporation with its principal place of business in Hawaii at Eaton Square Street, 444 Hobron Lane, Honolulu, Hawaii; (3) the funds for the contribution was from income made in Hawaii; and (4) the decision was made locally, by persons who are not foreing nationals.

10. Regarding the contribution of Michisaburo Hayashi in the amount of $250 made on March 16, 1988 (Count 11): since we

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cannot locate him, the campaign is not able to either ascertain the status of the individual or to return the money.

11. Regarding the contributions by Jet Hawaii, Inc. in the amount of $250 made on June 13, 1988 (Count 12) and $250 made on September 14, 1987 (Count 35): Patricia Yoshimoto, Vice President Finance of Jet Hawaii, Inc., sent us a letter dated June 27, 1989, that their contributions were not made by or through a foreign national, attached hereto as Exhibit D.

12. Regarding the contributions by Kauai Island Tours, Inc. in the amount of $250 made on June 13, 1988 (Count 13): Edward Matsukawa, Secretary-Controller for Kauai Island Tours, Inc., informed me in a telephone conversation on July 28, 1989, that (1) the contribution made by Kauai Island Tours, Inc. was not a contribution by or through a foreign national; (2) Kauai Island Tours, Inc. is a Hawaii corporation with its principal place of business in Hawaii located at Lihue Airport, Lihue Kauai, Hawaii; (3) the decision to make the contribution was made by local management. See Affidavit of Edward J. Matsukawa dated August 3, 1989, attached hereto as Exhibit E.

13. Regarding the contributions by Yokohama Okadaya Corp., in the amount of $100 made on July 6, 1988 (Count 17): James H. Kamo, the attorney for Yokohama Okadaya Corporation, informed me in a telephone conversation on July 31, 1989, that (1) the contributions made by Yokohama Okadaya Corporation were not contributions by or through a foreign national; (2) Yokohama Okadaya Corporation is a Hawaii corporation with its principal

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place of business in Hawaii at the Waikiki Shopping Plaza, Honolulu, Hawaii; (3) the contributions were made from local funds; and (4) the decision to make the contributions was made by Keijiro Harada who has been a Hawaii resident for the past ten years.

14. Regarding the contributions by Pan-Pacific Construction, Inc. in the amount of $1,500 made on March 16, 1988 (Count 18): Willie Nakakura, President of Pan-Pacific Construction, Inc., informed me in a telephone conversation on August 1, 1989, that (1) the contributions made by Pan-Pacific Construction, Inc. were not contributions by or through a foreign national; (2) Pan-Pacific Construction, Inc. is a Hawaii corporation with its principal place of business in Hawaii at 1001 Bishop Street, Suite 2650, Honolulu, Hawaii; (3) the decision to make the contributions was made by him who was born and raised in Hawaii; and (4) the money for the contributions were from funds made locally.

15. Regarding the contributions by Pan-Pacific Construction, Inc. in the amount of $500 made on August 2, 1988 (Count 19): Willie Nakakura, President of Pan-Pacific Construction, Inc., informed me in a telephone conversation on August 1, 1989, that (1) the contributions made by Pan-Pacific Construction, Inc. were not contributions by or through a foreign national; (2) Pan-Pacific Construction, Inc. is a Hawaii corporation with its principal place of business in Hawaii at 1001 Bishop Street, Suite 2650, Honolulu, Hawaii; (3) the

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decision to make the contributions was made by him who was born and raised in Hawaii; and (4) the money for the contributions were from funds made locally.

16. Regarding the contributions of Otaka, Inc. in the amount of $750 made on December 30, 1988 and $1,250 on August 2, 1988 for aggregate total of $2,000 (Count 20): Sabrina Shizue McKenna, Secretary & General Counsel of Otaka, Inc., informed us that (1) Otaka, Inc. is a Hawaii corporation with its principal place of business in Hawaii located at 2571 Lemon Road, Honolulu, Hawaii; (2) the decision to make the contribution was made solely by its President, Steve Kawagishi, a U.S. citizen; and (3) the funds contributed were from the company's Hawaii operations, in a letter dated July 31, 1989, attached hereto as Exhibit F.

17. Regarding the contributions of Otaka, Inc. in the amount of $750 made on December 30, 1988 and $1,250 on August 2, 1988 for aggregate total of $2,000 (Count 21): Sabrina Shizue McKenna, Secretary & General Counsel of Otaka, Inc., informed us that (1) Otaka, Inc. is a Hawaii corporation with its principal place of business in Hawaii located at 2571 Lemon Road, Honolulu, Hawaii; (2) the decision to make the contribution was made solely by its President, Steve Kawagishi, a U.S. citizen; and (3) the funds contributed were from the company's Hawaii operations, in a letter dated July 31, 1989, attached hereto as Exhibit F.

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18. Regarding the contribution by Grosvernor International (Hawaii) Ltd. in the amount of $500 made on September 4, 1987 (Count 28): Clytie Y. Kaneshiro, Treasurer for Grosvenor International (Hawaii) Ltd., sent us a letter dated July 19, 1989, enclosing their response to the FEC that their contribution was not made by or through a foreign national, attached hereto as Exhibit G.

19. Regarding the contribution by Halekulani Corporation in the amount of $2,000 on September 4, 1987 (Count 29): Morio Omori, attorney for Halekulani Corporation, sent us a letter dated July 24, 1989, enclosing their response to the FEC that their contributions were not made by or through a foreign national, attached hereto as Exhibit A.

20. Regarding the contribution by Hasegawa Komuten, Inc. in the amount of $250 made on August 4, 1987 (Count 30): Arthur Goto, attorney for Hasegawa Komuten, Inc., informed me in a telephone conversation on July 20, 1989, that (1) the contribution made by Hasegawa Komuten, Inc., was not a contribution by or through a foreign national; (2) Hasegawa Komuten is a Hawaii Corporation with its principal place of business in Hawaii at 820 Mililani Street, Suite 820, Honolulu, Hawaii; and (3) the decision was locally made.

21. Regarding the contribution by Hawaii Sekitei Corp. in the amount $1,000 made on August 24, 1987 (Count 31): Hiroyuki Yanagimoto of Hawaii Sekitei Corp., informed me in a telephone conversation on July 20, 1989 that (1) the contribution made by

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Hawaii Sekitei Corp. was not a contribution by or through a foreign national; (2) Hawaii Sekitei Corp. is a Hawaii corporation with its principal place of business in Hawaii at 2470 Kalakaua Avenue, Honolulu, Hawaii; and (3) the decision to make the contribution was made by him and he is a holder of a green card.

22. Regarding the contributions by Kauai Island Tours, Inc. in the amount of $500 made on September 14, 1987 (Count 37): Edward Matsukawa, Secretary-Controller for Kauai Island Tours, Inc., informed me in a telephone conversation on July 28, 1989, that (1) the contribution made by Kauai Island Tours, Inc. was not a contribution by or through a foreign national; (2) Kauai Island Tours, Inc. is a Hawaii corporation with its principal place of business in Hawaii located at Lihue Airport, Lihue Kauai, Hawaii; (3) the decision to make the contribution was made by local management. See Affidavit of Edward J. Matsukawa dated August 3, 1989, attached hereto as Exhibit E.

23. Regarding the contribution by Leyton House, Inc. in the amount of $500 made on September 4, 1987 (Count 42): Douglas D. Osterloh, attorney for Leyton House, Inc., sent us a letter dated July 25, 1989, that their contribution was not made by or through a foreign national, attached hereto as Exhibit H.

24. Regarding the contribution by Love's Bakery in the amount of $250 made on October 5, 1987 (Count 43): Thomas L. Meehan, President of Daiichiya-Love's Bakery, Inc., sent us a letter dated July 20, 1989, enclosing their response to the FEC

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that their contributions were not made by or through a foreign national, attached hereto as Exhibit I.

25. Regarding the contribution by New Toky'o-Hawaii Restaurant Co., Ltd. in the amount of $500 made on September 4, 1987 (Count 45): Jason G. F. Wong, attorney for New Tokyo-Hawaii Corporation, informed me in a telephone conversation on August 2, 1989, that (1) the contribution made by New Tokyo-Hawaii Corporation was not a contribution by or through a foreign national; (2) New Tokyo-Hawaii Corporation is a Hawaii corporation with its principal place of business in Hawaii located at 286 Beach Walk, Honolulu, Hawaii; (3) the decision to make the contribution was made by its local management whose Executive Director, Bert Shimabukuro, was born and raised here in Hawaii; and (4) that the money contributed came from local funds.

26. Regarding the contributions by Ohbayashi Hawaii Corporation in the amount of $1,000 made on August 24, 1987 (Count 46): Kevin S.C. Chang, attorney for Ohbayashi Hawaii Corporation, informed me in a telephone conversation on July 31, 1989, that (1) the contributions made by Ohbayashi Hawaii Corporation were not contributions by or through a foreign national; (2) Ohbayashi Hawaii Corporation is a Hawaii corporation with its principal place of business in Hawaii at 1001 Bishop Street, Suite 2680, Honolulu, Hawaii; and (3) the decision to make the contributions were made by Toshi Haru Hino, holder of a green card, who was following the advice of Norman Quon who is an American citizen.

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27. Regarding the contribution of Pacifico Creative Service in the amount of $500 made on September 4, 1987 (Count 48): Yuzo Kojima, Director of Administration of Pacifico Creative Services, Inc., sent us a letter dated July 20, 1989, enclosing their response to the FEC that their contributions were not made by or through a foreign national, attached hereto as Exhibit J.

28. Regarding the contribution of Plaza Hotel in the amount of $2,000 made on September 14, 1987 (Count 50): Gregory M. Sato, attorney for Plaza Hotel, sent us a letter dated July 18, 1989, enclosing their response to the FEC that their contribution was not made by or through a foreign national, attached hereto as Exhibit K.

29. Regarding the contribution of Saab-Scania of America, Inc. in the amount of $2,000 made on September 8, 1987 (Count 53): John Phelps Clark, Vice President and General Counsel of Saab-Scania of America Inc., sent us a letter dated July 24, 1989, enclosing their response to the FEC that their contribution was not made by or through a foreign national, attached hereto as Exhibit L.

30. Regarding the contribution of Servco Pacific, Inc. in the amount of $250 made on August 20, 1987 (Count 56): Sharleen H. Oshiro, Vice President and Legal Counsel for Servco Pacific, Inc., sent us a letter dated July 26, 1989, enclosing their response to the FEC that their contribution was not made by or through a foreign national, attached hereto as Exhibit M.

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31. Regarding the contributions by Yokohama Okadaya Corp., in the amount of $500 made on August 31, 1987 (Count 66): James H. Kamo, the attorney for Yokohama Okadaya Corporation, informed me in a telephone conversation on July 31, 1989, that (1) the contributions made by Yokohama Okadaya Corporation were not contributions by or through a foreign national: (2) Yokohama Okadaya Corporation is a Hawaii corporation with its principal place of business in Hawaii at the Waikiki Shopping Plaza, Honolulu, Hawaii; (3) the contributions were made from local funds; and (4) the decision to make the contributions was made by Keijiro Harada who has been a Hawaii resident for the past ten years.

32. Regarding the contribution by Longevity International Enterprises Corp. in the amount of $250 made on September 4, 1987 (Count 68): Thomas J. Wong, attorney for Longevity International Enterprises Corp., sent us a letter dated July 24, 1989, enclosing their response to the FEC that their contributions were not made by or through a foreign national, attached hereto as Exhibit N.

LYNNETTE T. OKA

Subscribed and sworn to before me
this 1st day of ~~January~~ September, 1989.

Notary Public, State of Hawaii

C.S My commission expires: 5-5-90

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MORIO OMORI
ATTORNEY-AT-LAW
PACIFIC TOWER, SUITE 1030
1001 BISHOP STREET
HONOLULU, HAWAII 96813
TEL. NO. (808) 533-4238
FAX NO. (808) 533-[illegible] 4239

RECEIVED JUL 25 1989

July 24, 1989

Howard Green, Esq.
Green, Ning, Lilly & Jones
707 Richards Street, Suite 700
Honolulu, Hawaii 96813

Dear Sir:

Your letter regarding contributions to Friends of Frank Fasi from my client, Halekulani Corporation, has been referred to me.

A response to the Federal Elections Commission has been made by way of an affidavit from the Vice President-Operations of Halekulani Corporation.

The contributions to the Friends of Frank Fasi were made by Halekulani Corporation, a Hawaii corporation, owned by a California corporation which is owned by a Japan corporation. The contributions were made by Halekulani Corporation from its own funds and without the directions, approval or knowledge of the California corporation and the Japan corporation.

We are awaiting a reply from the counsel for the Federal Elections Commission.

I hope the foregoing responds adequately to your inquiry.

Sincerely,

MORIO OMORI

MO:cyk

cc: Halekulani Corporation

EXHIBIT A

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SIU

AFFILIATED WITH THE SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA • AFL-CIO

SEAFARERS INTERNATIONAL UNION
ATLANTIC • GULF • LAKES AND INLAND WATERS DISTRICT

5201 AUTH WAY • CAMP SPRINGS, MARYLAND 20746 • (301) 899-0675

PRESIDENT
JOSEPH SACCO
EXECUTIVE VICE PRESIDENT
ANGUS CAMPBELL
VICE PRESIDENT
JOE DICONDRO
SECRETARY-TREASURER
JACK CAFFEY
VICE PRESIDENT
THOMAS GLIDEWELL
VICE PRESIDENT
GEORGE McCARTNEY
VICE PRESIDENT
JOHN FAY
VICE PRESIDENT
ROY A. MERCER
VICE PRESIDENT
STEVE EDNEY
VICE PRESIDENT

July 18, 1989

Howard R. Green, Esquire
Green , Ning, Lilly & Jones
707 Richards Street
Suite 700
Honolulu, HI 96813

RE: Contribution to Friends of Frank Fasi

Dear Mr. Green:

This letter is in response to your letter dated July 14, 1989. The Seafarers International Union received from the Federal Election Commission a copy of the Complaint alleging illegal contributions to Friends of Frank Fasi in connection with the political campaign of Mayor Frank Fasi fin 1987-1988.

By letter dated June 16, 1989 the Union responded to the Federal Election Commission's inquiry into the Complaint. I have enclosed a copy of the Union's response for your information. If you have any questions, I can be contacted at (301) 899-0675.

Sincerely,

Stanford Dubin

Stanford Dubin
Associate Counsel

SD:ald

Enclosure

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EXHIBIT B-1

FAX (301) 899-7355

SIU

AFFILIATED WITH THE SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA • AFL-CIO

SEAFARERS INTERNATIONAL UNION
ATLANTIC • GULF • LAKES AND INLAND WATERS DISTRICT

5201 AUTH WAY • CAMP SPRINGS, MARYLAND 20746 • (301) 899-0675

MICHAEL SACCO
PRESIDENT
JOSEPH SACCO
EXECUTIVE VICE PRESIDENT
ANDREW CAMPBELL
VICE PRESIDENT
JOE RODRIGUE
SECRETARY
JACK CAFFEY
VICE PRESIDENT
THOMAS GLIDEWELL
VICE PRESIDENT
GEORGE McCARTHY
VICE PRESIDENT
JOHN FAY
VICE PRESIDENT
ROY A. MERCER
VICE PRESIDENT
STEVE EDNEY
VICE PRESIDENT

June 16, 1989

Lois G. Lerner
Associate General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

RE: MUR 2892
Seafarers' International Union

Dear Ms. Lerner:

Please consider this letter as the response on behalf of the Seafarers' International Union (hereinafter SIU or the Union) to your letter of June 6, 1989 in the above-captioned matter. In addition, please find enclosed the Statement of Designation of Counsel.

The facts, based upon the Complaint of Anthony P. Locriccitio, Esq. et al., involve campaign contributions alleged to be from foreign nationals to Frank Fasi, Mayor of Honolulu. Specifically, as to the SIU the Complaint alleges that the "...S.I.U. of N.A. which is believed to be a foreign owned and/or controlled corporation who list their address as 5201 Auth Way, Camp Springs, MD 20746, whose contribution was for $500.00 made on 12/30/88". The contribution in question was not from the SIU. Rather, it was a contribution from the United Industrial Workers, Service, Transportation, Professional & Government of North America (hereinafter UIW) which is an affiliate of the SIU.

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B-2

It is the Union's position that the Complaint as to the SIU and UIW should be dismissed. First, the Federal Election Commission lacks jurisdiction over any election other than for a Federal office. The SIU/UIW is aware that Section 441 e of the Federal Election Campaign Act (FECA) prohibits political contributions by foreign nationals. However, Section 110.4 of the Federal Election Commission Regulations, 11 CFR Ch. 1 Part 110 Section 110.4, which prohibits a foreign national from contributing to any local State or Federal public office, is inconsistent with the intent of FECA which is to set forth rules governing Federal elections. There appears to be no specific language in FECA to provide the Federal Election Commission with jurisdiction to regulate State and Local elections. Therefore, even if a foreign national may not contribute to a Federal election the Federal Election Commission is without jurisdiction to promulgate regulations prohibiting foreign nationals from contributing to State and Local elections.

Second, even if the Federal Election Commission has jurisdiction over campaign contributions by foreign nationals to State and Local elections, neither the UIW or SIU is foreign owned. The SIU and UIW are both American unions. Neither SIU or UIW is owned in whole or in part by any foreign national. In order to verify this statement the Federal election commission, as well as anyone else, can obtain a copy of Labor Union Report LM-2 for both the SIU and UIW, filed with the United States Department of Labor, Washington, D.C.

In conclusion, based upon the fact that the SIU and UIW are not foreign owned and that the Federal Elections Commission does not have jurisdiction over State and Local elections the Complaint as to the SIU (and UIW) should be dismissed. If you have any questions I can be contacted at (301)899-0675 ext.277.

Yours very truly,

Stanford Dubin

Stanford Dubin
Associate Counsel

SD:law
Enclosure

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ODGILL ANDERSON QUINN & FEL
ATTORNEYS AT LAW
1600 BANCORP TOWER
130 MERCHANT STREET
HONOLULU, HAWAII 96813
MAIL ADDRESS: P. O. BOX 3194
HONOLULU, HAWAII 96801
FACSIMILE (808) 531-2628
TELEPHONE (808) 547-5600
TELEX 7430146 (RCD)

17212/70229

July 18, 1989

HAND DELIVER

Howard R. Green, Esq.
Green, Ning, Lilly & Jones
707 Richards Street, Suite 700
Honolulu, Hawaii 96813

Dear Howard:

Azabu Realty, Inc. ("Azabu") has provided me with a copy of your July 14, 1989 letter with respect to the political contribution made to the Friends of Frank Fasi. enclosed please find a copy of our letter to the Federal Election Commission.

Very truly yours,

Ray Iwamoto

Raymond S. Iwamoto

RSI:ek
Enclosure

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EXHIBIT C-1

GOODSILL ANDERSON QUINN & STIFEL
ATTORNEYS AT LAW
1600 BANCORP TOWER
130 MERCHANT STREET
HONOLULU, HAWAII 96813
MAIL ADDRESS P. O. BOX 3196
HONOLULU, HAWAII 96801
FACSIMILE (808) 531 2628
TELEPHONE (808) 547-5600
TELEX 7430246 JEXID

17212/70229

June 23, 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Lawrence M. Noble
General Counsel
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Re: MUR 2892 Azabu Realty, Inc.

Dear General Counsel Noble:

We represent Azabu Realty, Inc. ("Azabu"), a Hawaii corporation, with regard to MUR 2892 and on behalf of Azabu, hereby respond to the Federal Election Commission's notification to Azabu, received on June 12, 1989, of a complaint ("Complaint") dated May 3, 1989, by the Maunawili Community Association, Anthony P. Locricchio, Victoria Creed, Karen Kosoc, and Donna Wong.

The Complaint alleges that on August 2, 1988, Azabu, as a "company owned by a Japanese national company," contributed $2,000 to "Friends of Fasi," the campaign committee for the Mayor of the City and County of Honolulu, Frank F. Fasi, and that such contribution possibly violated federal law.

Azabu does not dispute that it made the contribution to "Friends of Fasi." As the attached affidavit of Mr. Koichi Tadokoro, Executive Vice President of Azabu demonstrates, the contribution was made in response to a fundraising solicitation by "Friends of Fasi" to Azabu. However, Azabu did not make the contribution with any

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knowledge or reason to believe that the contribution could in any way be construed as a violation of any law. (See Affidavit of Mr. Tadokoro).

For the following reasons, Azabu believes that the Federal Election Commission should not take further action with regard to MUR 2892.

First, the Complaint against Azabu should be dismissed because Azabu is not a foreign national within the meaning of 2 U.S.C. § 441e and 22 U.S.C. § 611(B). Azabu is a Hawaii corporation. Its corporate headquarters is in Hawaii and all of its business is conducted in Hawaii. Further, although Azabu is owned by a foreign corporation, the funds for the contribution were funds of Azabu earned in Hawaii and did not directly or indirectly come from Azabu's parent corporation.

Second, even if Azabu were a foreign national, which it is not, or in making the contribution acted on behalf of a foreign national, which it did not, it is Azabu's position that 2 U.S.C. § 441e only prohibits "contributions" by foreign nationals to elections of "candidates" to federal political office. Section 441e does not expressly provide that it applies to state and local elections. Indeed, the terms "contributions" and "candidate" are defined by 2 U.S.C. §§ 431(2) and (A) in a manner which renders them applicable only to "elections for Federal Office". Furthermore, while 11 CFR § 110.4 may purport to prohibit contributions by foreign nationals to elections in connection with "any local, state or federal public office," there is no indication in either the Federal Election Campaign Act itself or its legislative history that the law was intended to be construed so broadly. See S. Rep. No. 677, 94th Cong., 2nd Sess. 2 (1976), reprinted in 1976 U.S. Code Cong. and Ad. News 930. Thus, 11 CFR § 110.4 is invalid because it is not authorized by statute. Moreover, if 11 CFR § 110.4 were authorized by statute, it would be unconstitutional, since it would constitute an improper congressional attempt to regulate state and local elections. See Oregon v. Mitchell, 400 U.S. 112, 117-118 (1970) (Black J. announcing judgment); see also Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986).

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In conclusion, based on the foregoing reasons, Azabu respectfully requests that the Federal Election Commission not take action in MUR 2892.

Very truly yours,

GOODSILL ANDERSON QUINN & STIFEL

Raymond S. Iwamoto

Raymond S. Iwamoto

RSI:ek
Enclosure
cc: Mr. Koichi Tadokoro

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AFFIDAVIT OF KOICHI TADOKORO

STATE OF HAWAII)
) SS.:
CITY AND COUNTY OF HONOLULU)

KOICHI TADOKORO, being duly sworn under oath, deposes and says:

1. I am the Executive Vice President of Azabu Realty, Inc. ("Azabu") and have served in that capacity since June, 1987. I am providing this affidavit in support of Azabu's response to the Complaint pending before the Federal Election Commission in MUR 2892.

2. Azabu was incorporated under the laws of the State of Hawaii on June 26, 1987 and has done business only in Hawaii as a brokerage business continually since then.

3. Although Azabu is owned by a foreign corporation, it is a separate profit center from its parent corporation. It keeps its own books and performs its own year end audit separate and apart from its parent corporation. The $2,000 contribution made by Azabu in August of 1988 to "Friends of Fasi" came from funds generated solely by Azabu and not by its parent corporation. The decision to make the $2,000 contribution was made solely in Hawaii by the officers of Azabu and not by any of its parent corporation.

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4. In August of 1988, Azabu was solicited to purchase and did purchase fundraiser tickets from "Friends of Fasi," Mayor Frank Fasi's campaign committee. Azabu had no knowledge or reason to believe that the purchase of these tickets could be potentially in violation of any state or federal law.

Further affiant sayeth naught.

KOICHI TADOKORO

Subscribed and sworn to
before me this 23rd day of
June, 1989.

Notary Public, State of Hawaii

My Commission Expires: 8/28/92

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RECEIVED
AUG 2 1989

CARLSMITH, WICHMAN, CASE, MUKAI AND ICHIKI
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING LAW CORPORATIONS
1001 BISHOP STREET
PACIFIC TOWER, SUITE 2200
HONOLULU, HAWAII 96813
CABLE ADDRESS: CWCMI
TELEX 723-8770 CWCMI HR
TELECOPIER (808) 523-0842

HONOLULU OFFICE:
P. O. BOX 656
HONOLULU, HAWAII 96809
(808) 523-2500

GUAM OFFICE:
P. O. BOX 8F
AGANA, GUAM 96910
(671) 472-6813
TELEX 721-6486 CWCMI GH

LOS ANGELES OFFICE:
P. O. BOX 71169
LOS ANGELES, CALIFORNIA 90071-0169
(213) 955-1200

HILO OFFICE:
P. O. BOX 686
HILO, HAWAII 96721-0686
(808) 935-6644

KONA OFFICE:
P. O. BOX 1720
KAILUA-KONA, HAWAII 96745-1720
(808) 329-6464

MAUI OFFICE:
P. O. BOX 1086
WAILUKU, HAWAII 96793
(808) 242-4535

SAIPAN OFFICE
P. O. BOX 241 CHRB
SAIPAN, MP 96950
(670) 322-3455
TELEX 783-658 CWCMI SPN

June 27, 1989

RECEIVED
JUN 29 '89

VIA TELECOPIER

and

EXPRESS MAIL,
RETURN RECEIPT REQUESTED

Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Attention: Patty Reilly, Esq.

Re: MUR 2892/Jet Hawaii, Inc.

Gentlemen:

As indicated on the enclosed "Statement of Designation of Counsel," this law firm represents Jet Hawaii, Inc. ("JHI") in connection with the above-referenced matter. We are responding to your letter to JHI dated June 6, 1989, which was received by JHI on June 13, 1989.

We understand the complaint filed by Anthony P. Locricchio to allege that JHI has violated 2 U.S.C. § 441e which prohibits foreign nationals from making, directly or through any other person, any contribution in connection with an election to a political office. For the reasons stated herein, we believe that the complaint should be dismissed and no action should be taken by the Commission against JHI since it has not violated 2 U.S.C. § 441e.

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EXHIBIT D

We believe that the complaint should be dismissed because we believe that 2 U.S.C. § 441e does not apply to "contributions" made to state or local elections. Although the regulations of the Commission (11 C.F.R. § 110.4(a)(1)) expressly state that foreign nationals may not make contributions to state or local elections, 2 U.S.C. § 441e does not expressly apply to state or local elections. In fact, it should be noted that the word "contribution" which is used in 2 U.S.C. § 441e is defined by 2 U.S.C. § 431(8)(A) as a gift, etc. "for the purpose of influencing any election for Federal office." Therefore, the complaint should be dismissed since 2 U.S.C. § 441e appears to apply only to elections for Federal office.

However, even if it is assumed that 2 U.S.C. § 441e applies to state or local elections, we still contend that JHI has not violated 2 U.S.C. § 441e because it is a U.S. domestic corporation. JHI is a corporation duly organized and formed under the laws of the State of Hawaii and whose principal business is within the State of Hawaii. Please see copy of the Articles of JHI enclosed herewith for your review. Inasmuch as JHI is a corporation organized under the law of a state within the United States, and has its principal place of business within the United States, we believe that JHI is not a "foreign national" or a "foreign principal" as defined by 2 U.S.C. § 441e(b)(1) and 22 U.S.C. § 611(b), respectively. We believe that previous opinions of the Federal Election Commission have also confirmed that a U.S. corporation whose principal place of business is within the United States is not a "foreign national." See, e.g., Advisory Opinion 1982-10.

Although there appears to be no judicial precedents on point, we understand that past Advisory Opinions of the Commission also take into account whether foreign nationals whom are officers or directors of the U.S. corporation participated in any way in the decision-making process with respect to the making of the political contribution to determine whether 2 U.S.C. § 441e has been violated. See, e.g., Advisory Opinion 1982-10. Inasmuch as there appears to be no judicial precedents on point, we cannot acknowledge that the position of the Commission is correct. However, even if it is assumed that the Commission is correct, JHI has advised us that no foreign nationals (persons who are not U.S. citizens or

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permanent residents) participated in any way in the decision-making process with respect to the making of the political contribution which is the subject of the complaint or for any other political contributions.

For the reasons stated above, we believe that the complaint against JHI should be dismissed and the Commission should find that no violation of 2 U.S.C. § 441e has occurred. Please be advised that JHI wishes to cooperate fully with the Commission in connection with the instant complaint. If you have any questions or require additional information in connection with this matter, please do not hesitate to contact us.

Very truly yours,

Karl K. Kobayashi

KK:cai
Enclosures
cc: Jet Hawaii, Inc.

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AFFIDAVIT OF EDWARD J. MATSUKAWA

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

EDWARD J. MATSUKAWA, being first duly sworn on oath, deposes and states:

1. I am the Secretary-Controller of Kauai Island Tours, Inc.

2. Kauai Island Tours, Inc. is a Hawaii Corporation with its principal place of business in Hawaii.

3. The decision-making and direction to make the campaign contribution to Mayor Fasi was solely made by the management persons of the Kauai Island Tours, Inc. office in Kauai, Hawaii, consisting of: Edward J. Matsukawa (Secretary-Controller), Leonard Y. Abeshima (Treasurer) and Lindbergh M. Akita (Director/Consultant).

4. All of the above-named persons involved in the decision to make the contribution have been Kauai island residents for over 30-years, and have, except for myself, been with the company since its inception in May 1971 or prior to that time.

EDWARD J. MATSUKAWA

Subscribed and sworn before me
this 3rd day of Aug 1989.

Carol Ayesha
Notary Public, State of Hawaii

My Commission expires: 2-2-90

EXHIBIT E

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OTAKA, INC.

[illegible]

July 31, 1989

Lynnette T. Oka, Esq.
GREEN, NING, LILLY, & JONES
707 Richards Street, Suite 700
Honolulu, Hawaii 96813

Dear Ms. Oka:

This is in response to your firm's letter dated July 14, 1989.

We have already responded directly to the Federal Election Commission with regard to our contributions to the Friends of Fasi. For your information, however, we wish to note the following.

Otaka, Inc., the contributor in question, is a Hawaii corporation. It is ultimately owned by Japanese nationals. At the time the contributions were made, the individual ultimately owning more than 90% of this corporation was a resident of Japan. In 1989, this individual obtained immigrant status in the United States.

In any event, the funds contributed to the Friends of Fasi were not provided by any foreign nationals. The funds were directly from our Hawaii operations. The decision to contribute the funds was made <u>solely</u> by our President, Steve Kawagishi, a U.S. citizen.

We trust that this responds to your inquiries, and appreciate your attention to this matter.

Sincerely,

OTAKA, INC.

Sabrina Shizue McKenna

Sabrina Shizue McKenna
Secretary & General Counsel

SSM:df

cc: Steve Kawagishi

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EXHIBIT F

GROSVENOR INTERNATIONAL
Grosvenor Center
733 Bishop Street • Suite 1717 • Honolulu, Hawaii 96813
Telephone (808) 537-6132 • Telecopier (808) 533-2047

RECEIVED JUL 20 1989

July 19, 1989

Howard R. Green, Esq.
Green, Ning, Lilly, & Jones
707 Richards Street, Suite 700
Honolulu, Hawaii 96813

Dear Mr. Green:

Thank you for your letter of July 14, 1989 in connection with the political campaign of Mayor Frank Fasi in 1987-1988.

We were notified by the Federal Election Commission of our being named in the Complaint MUR 2892. We have already responded to the Federal Election Commission and we have enclosed the following documents for your information:

1. Affidavit of Clytie Y. Kaneshiro (without Exhibit A)

2. Statement of Designation of Counsel

3. Draft copy of our legal counsel's letter dated June 22, 1989

All of the above were sent to the Federal Election Commission on or around June 27, 1989.

Your concern and consideration in this matter is greatly appreciated.

Sincerely,

Clytie Y. Kaneshiro
Treasurer

CYK:jmi
Enclosures

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EXHIBIT G

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AFFIDAVIT OF CLYTIE Y. KANESHIRO

STATE OF HAWAII)
) SS.:
CITY AND COUNTY OF HONOLULU)

CLYTIE Y. KANESHIRO, being duly sworn under oath, deposes and says:

1. I am the Treasurer of Grosvenor International (Hawaii) Limited and have served in that capacity since October of 1980. I am providing this affidavit in support of Grosvenor International (Hawaii) Limited's response to the Complaint pending before the Federal Election Commission in MUR 2892.

2. Grosvenor International (Hawaii) Limited was incorporated under the laws of the State of Hawaii on June 2, 1969 and since then has done business continuously in Hawaii as a developer of real estate. Grosvenor International (Hawaii) Limited's corporate headquarters are located at Grosvenor Center, 733 Bishop Street, Suite 1717, Honolulu, Hawaii.

3. Grosvenor International (Hawaii) Limited is a subsidiary of Grosvenor International (U.S.A.) Limited which is a corporation incorporated under the laws of the State of Nevada. Grosvenor International (U.S.A.) Limited is owned by a Canadian corporation and the Trustees of the 4th Duke of Westminster's Settlement, a

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United Kingdom entity. However, Grosvenor International (Hawaii) Limited is a separate profit center from Grosvenor International (U.S.A.) Limited or any of Grosvenor International (U.S.A.) Limited's parent entities. Grosvenor International (Hawaii) Limited keeps its own books and performs its own year end audit.

4. The $500 donation made by Grosvenor International (Hawaii) Limited in September of 1987 to "Friends For Fasi" came from funds generated solely by Grosvenor International (Hawaii) Limited, not its parent corporation or any of that corporation's parent entities. The decision to make the $500 donation was made solely by Grosvenor International (Hawaii) Limited.

5. In June of 1987, Grosvenor International (Hawaii) Limited was solicited by "Friends For Fasi," Mayor Frank Fasi's campaign committee, in a letter to Larry Fukunaga, one of Grosvenor International (Hawaii) Limited's project managers, to purchase two fundraiser tickets. The tickets, which were enclosed with the solicitation letter, were purchased by Grosvenor International (Hawaii) Limited. In so doing, Grosvenor International (Hawaii) Limited had no knowledge or reason to believe that the purchase of these tickets could be potentially in violation of any state or federal law. Attached hereto as Exhibit "A" is a copy of the letter

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from "Friends For Fasi," to Mr. Larry Fukunaga, with its attachment pertaining to the non-deductibility of contributions for Hawaii income tax purposes.

Further affiant sayeth naught.

CEYTIE Y. KANESHIRO

Subscribed and sworn to
before me this 26th day of
June, 1989.

Notary Public, State of Hawaii

My Commission Expires: 1/22/92

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 2892

NAME OF COUNSEL: Russell S. Kato

ADDRESS: Goodsill Anderson Quinn & Stifel
1600 Bancorp Tower
130 Merchant Street

Honolulu, Hawaii 96813

TELEPHONE: (808) 547-5600

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

June 27, 1989
Date

Signature

RESPONDENT'S NAME: Mrs. Clytie Y. Kaneshiro

ADDRESS: Grosvenor International (Hawaii) Limited
733 Bishop Street, Suite 1717
Honolulu, Hawaii 96813

HOME PHONE: (808) 533-4779

BUSINESS PHONE: (808) 537-6132

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GOODSILL ANDERSON QUINN & STIFEL
ATTORNEYS AT LAW
1600 BANCORP TOWER
130 MERCHANT STREET
HONOLULU, HAWAII 96813
MAIL ADDRESS: P. O. BOX 3196
HONOLULU, HAWAII 96801
FACSIMILE (808) 531-2628
TELEPHONE (808) 547-5400
TELEX 7430246 JEXID

DRAFT

June 22, 1989

Mr. Lawrence M. Noble
General Counsel
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Re: MUR 2892 Grosvenor International (Hawaii), Ltd.

Dear General Counsel Noble:

We represent Grosvenor International (Hawaii), Ltd. ("Grosvenor International"), a Hawaii corporation, with regard to MUR 2892 and on behalf of Grosvenor International, hereby respond to the Federal Election Commission's notification to Grosvenor International, received on June 13, 1989, of a complaint ("Complaint") dated May 3, 1989, by the Maunawili Community Association, Anthony P. Locricchio, Victoria Creed, Karen Kosoc, and Donna Wong.

The Complaint alleges that on September 4, 1987, Grosvenor International, a corporation "whose parent corporation is in Canada, also with possible British ties", improperly donated $500.00 to "Friends For Fasi," the campaign committee for the Mayor of the City and County of Honolulu, Frank F. Fasi.

Grosvenor International does not dispute that it made the donation to "Friends For Fasi." As the attached affidavit of Mrs. Clytie Y. Kaneshiro, Treasurer of Grosvenor International, demonstrates, the donation was made in response to a fundraising event ticket solicitation mailed directly by "Friends For Fasi" to Grosvenor International (see Exhibit A to affidavit of Mrs. Kaneshiro). However, Grosvenor International did not

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make the donation with any knowledge or reason to believe that the donation could in any way be construed as a violation of any law. (See Affidavit of Mrs. Kaneshiro).

For the following reasons, Grosvenor International believes that the Federal Election Commission should not take further action against it with regard to MUR 2892.

First, the Complaint against Grosvenor International should be dismissed because Grosvenor International is not a foreign national within the meaning of 2 U.S.C. § 441e and 22 U.S.C. § 611(B). (See Affidavit of Mrs. Kaneshiro). Grosvenor International is a Hawaii corporation. Its corporate headquarters are in Honolulu, Hawaii. Moreover, contrary to the allegations of the Complaint, Grosvenor International's parent corporation is Grosvenor International (U.S.A.), a Nevada corporation, not a Canadian corporation. Further, although Grosvenor International (U.S.A.) is owned by foreign entities, the funds for the $500 donation did not directly or indirectly come from Grosvenor International (U.S.A.) or these foreign entities. (See Affidavit of Mrs. Kaneshiro).

Second, even if Grosvenor International were a foreign national, which it is not, or in making the donation acted on behalf of a foreign national, which it did not, it is Grosvenor International's position that 2 U.S.C. § 441e only prohibits "contributions" by foreign nationals to elections of "candidates" to federal political office. Section 441e does not expressly provide that it applies to state and local elections. Indeed, the terms "contributions" and "candidate" are defined by 2 U.S.C. §§ 431(2) and (A) in a manner which renders them applicable only to "elections for Federal Office". Furthermore, while 11 CFR § 110.4 may purport to prohibit contributions by foreign nationals to elections in connection with "any local, state or federal public office," there is no indication in either the Federal Election Campaign Act itself or its legislative history that the law was intended to be construed so broadly. See S. Rep. No. 677, 94th Cong., 2nd Sess. 2 (1976), reprinted in 1976 U.S. Code Cong. and Ad. News 930. Thus, 11 CFR § 110.4 is invalid because it is not authorized by statute. Moreover, if 11 CFR § 110.4 were authorized by statute, it would be unconstitutional, since it would constitute an improper congressional attempt to regulate

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state and local elections. See Oregon v. Mitchell, 400 U.S. 112, 117-118 (1970) (Black J. announcing judgment); see also Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986).

In conclusion, based on the foregoing reasons, Grosvenor International respectfully requests that the Federal Election Commission not take action against it in MUR 2892.

Very truly yours,

GOODSILL ANDERSON QUINN & STIFEL

Russell S. Kato

RSK:rr
Enclosures

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RECEIVED
JUL 27 1989

DAMON KEY BOCKEN LEONG KUPCHAK

A LAW CORPORATION

Attorneys at Law

1600 Pauahi Tower
1001 Bishop Street
Honolulu, Hawaii 96813

Telephone (808) 531-8031
Telex 61430 DKBLK 61430
Facsimile (808) 531-2242
Cable Address ADMON ATTY

R. Charles Bocken
Clinton K.I. Chong
C.F. Damon Jr.
Ben R. Egami
Eric D. Lee
Kamala I. Evora
Gerhard Frohlich
Duane D. Hawley
Charles W. Key
Christine A. Kubota
Kenneth R. Kupchak
Denis C.H. Leong
Laurel K.S. Lee
James C. McWhinnie
Francis K. Mukai
Douglas D. Overholt
Robert H. Thomas
Joslyn V. Wood
Michael A. Yoshida
Michael E. Yoshi

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July 25, 1989

Howard R. Green, Esq.
Green Ning Lilly and Jones
707 Richards Street, Suite 700
Honolulu, Hawaii 96813

Re: Federal Election Commission MUR 2892

Dear Mr. Green:

This is in response to your letter of July 14, 1989, on the above-referenced matter. We represent Leyton House (Hawaii), Inc. with respect to the matter and are responding on its behalf.

Leyton House (Hawaii), Inc. is a Hawaii corporation whose sole stockholder is a citizen and resident of Japan. The day-to-day operations of the corporation are handled by the Vice President and General Manager who lives locally.

At the time the contribution was made to Friends for Fasi campaign, the Vice President and General Manager was Mr. Toshiaki Takahashi. Mr. Takahashi has since resigned from the corporation and is believed to be residing in Tokyo, Japan. While Mr. Takahashi is a Japanese citizen, he is also a lawful permanent resident (green card holder) in the United States.

The monies used for the contribution in August 1987, came from corporate earnings. None of the funds were from offshore. Additionally, the decision to make the contribution was made by Mr. Takahashi without input or advice from the foreign national stockholder, or any other foreign national.

We do not believe there was a violation of the federal election laws, 2 U.S.C. § 441(e).

EXHIBIT H

If you have any comments or questions, please contact the undersigned.

Very truly yours,

DAMON KEY BOCKEN LEONG KUPCHAK

Clinton K. L. Ching
Douglas D. Osterloh

CKLC/DDO:wpc

cc: Leyton House (Hawaii), Inc.
Attention: Ken Nakamura

0001g/46

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DAIICHIYA — LOVE'S BAKERY, INC.
P. O. BOX 294
HONOLULU, HAWAII 96809
TELEPHONE (808) 737-5561
TELEX: 7430247

July 20, 1989

Howard R. Green, Esq.
Green, Ning, Lilly, & Jones
707 Richards Street, Suite 700
Honolulu, Hawaii 96813

Dear Mr. Green:

Thank you for your letter of July 14, 1989, relative to the complaint filed by the Federal Elections Commission alleging that Daiichiya-Love's Bakery, Inc.'s contribution to the political campaign of Mayor Frank Fasi in 1987-88 may have been an illegal contribution.

For your information, I am attaching copies of documents sent by our legal counsel, Steven M. Okano, of McCorriston, Miho & Miller, in response to the Complaint and which documents are self-explanatory.

If there are any questions regarding this matter, please feel free to contact me at 737-5561.

Sincerely,

Thomas L. Meehan

Thomas L. Meehan
President

TLM:ju
Enclosures

cc: Steven M. Okano, Esq.

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EXHIBIT I

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2[illegible]

NAME OF COUNSEL: Steven M. Okano
McCorriston, Miho & Miller

ADDRESS: Suite 1500 Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813

TELEPHONE: (808) 537-6977

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

6/22/89
Date

DAIICHIYA-LOVE'S BAKERY, INC.
By Thomas Meehan
Signature THOMAS MEEHAN

RESPONDENT'S NAME: Thomas Meehan

ADDRESS: Daiichiya-Love's Bakery, Inc.
P.O. Box 294
Honolulu, Hawaii 96809

HOME PHONE: 261-7036

BUSINESS PHONE: 737-5561

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June 21, 1989

Mr. Lawrence Noble
General Counsel
Federal Election Commission
999 E. Street N.W.
Washington, D.C. 20463

RE: MUR 2892/ DAIICHIYA-LOVE'S BAKERY, INC.

Dear Mr. Noble:

This reply is in regard to MUR 2892, a complaint filed with the Federal Election Commission alleging that Daiichiya-Love's Bakery, Inc. may have violated the Federal Election Campaign Act of 1971.

On October 5, 1987, Daiichiya-Love's Bakery, Inc. ("Love's") made a $250.00 contribution to the Mayoral Campaign of Frank Fasi. Love's is a corporation organized under the laws of the State of Hawaii and has its principal place of business in the State of Hawaii. Love's, in fact, does almost all of its business in Hawaii, except for some sales in Guam and elsewhere in the Pacific. Attached is an affidavit by Mr. Thomas Meehan, President of Daiichiya-Love's Bakery, detailing the facts noted above and referred to below.

Under the Federal Election Campaign Act of 1971, as amended, in particular 2 U.S.C. Section 441e, contributions by foreign nationals are prohibited. Subsection (b)(1) states that "foreign national" shall mean a foreign principal as defined by 22 U.S.C. Section 611(b). 22 U.S.C. Section 611(b) provides that the term "foreign principal," in the context of corporations, refers to "a...corporation...organized under the laws or having its principal place of business in a foreign country." It specifically excepts a corporation that "is organized or created by the laws of the United States or of any State...and has its principal place of business within the United States." 22 U.S.C. Section 611(b)(2). Thus, under the plain language of the statute, Love's does not fall within the prohibition because it both is organized under the laws of the State of Hawaii and has its principal place of business within the United States. This is also the interpretation given to 22 U.S.C. Section 611(b) by the United States Court of Appeals for the District of Columbia in United States v. McGoff, 831 F.2d 1071, 1074 (D.C.Cir. 1987).

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Thus, while First Baking Company, Ltd., a Japan corporation, does own 99% of the stock of Love's and three of seven members of the board of Love's are also directors of First Baking Company, Ltd., it seems clear that those facts are simply irrelevant to the status of Love's under 2 U.S.C. Section 441e. The decision to make the contribution was an independent one on the part of Love's. It was not a contribution on behalf of, or at the direction or request of First Baking Company, Ltd. First Baking Company, Ltd., in fact, had no knowledge of the contribution. Finally, Love's is the only connection that First Baking Company, Ltd. has to Hawaii and the idea that a bakery would somehow want to influence the location of a golf course, as the complaint seems to imply, seems implausible.

For the foregoing reasons, and in particular because of the simple fact that the statute specifically excepts corporations organized and doing business in the United States, Daiichiya-Love's Bakery, Inc. believes that no action should be taken against it in response to the complaint by the Maunawili Community Association.

DAIICHIYA-LOVE'S BAKERY, INC.

By Thomas Meehan
Thomas Meehan

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AFFIDAVIT OF THOMAS MEEHAN

STATE OF HAWAII)
: SS.
CITY AND COUNTY OF HONOLULU)

THOMAS MEEHAN, being first duly sworn, on oath, deposes and says:

1. That he is the President of Daiichiya-Love's Bakery, Inc.

2. That Daiichiya-Love's Bakery, Inc. is a corporation organized under the laws of the State of Hawaii.

3. The principal place of business of Daiichiya-Love's Bakery, Inc. is the State of Hawaii.

4. That a contribution of $250.00 was made to the mayoral campaign of Frank Fasi on October 5, 1987 by Daiichiya-Love's Bakery, Inc.

5. That the contribution of October 5, 1987 was not made on behalf of, or at the direction of First Baking Company, Ltd., a Japan corporation. First Baking Company, Ltd. had no knowledge of the contribution.

6. That there are three members of the Board of Directors of Daiichiya-Love's Bakery who also hold seats on the Board of Directors of First Baking Company, Ltd. There are seven total members on the Daiichiya-Love's Bakery, Inc. Board of Directors.

7. That First Baking Company, Ltd. owns approximately 99% of the stock of Daiichiya-Love's Bakery, Inc.

8. That Daiichiya-Love's Bakery, Inc. is the only

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presence of First Baking Company, Ltd. in Hawaii.

9. That Daiichiya-Love's Bakery, Inc. does not have any involvement with the proposed golf course development in Maunawili Valley.

Futher affiant sayeth naught.

Thomas Meehan

THOMAS MEEHAN

Subscribed and sworn to before me
this 22nd day of June, 1989.

Notary Public, State of Hawaii

My commission expires: 7/21/89

LS

9404357324 6

PACIFICO CREATIVE SERVICE, INC.
Hawaii Regional Office
Suite 1600, Waikiki Business Plaza
2270 Kalakaua Avenue
Honolulu, Hawaii 96815
Tel: (808) 926-4500

RECEIVED

July 20, 1989

Howard R. Green, Esq
Green, Ning, Lilly, & Jones
707 Richards Street, Suite 700
Honolulu, Hawaii 96813

Dear Mr. Green:

Thank you for your letter of July 14, 1989 inquiring about our company's position on the complaint filed with the Federal Election Commission.

Through our attorneys, we have already responded to the Federal Election Commission. For your information, a copy of our response is enclosed.

Very truly yours,

Yuzo Kojima
Director, Administration

YK:anh
Enclosure

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EXHIBIT 1

JALPAK JALPAK JALPAK JALPAK JALPAK JALPAK JALPAK JALPAK JALPAK

GOODSILL ANDERSON QUINN & STIFEL

ATTORNEYS AT LAW

1600 BANCORP TOWER
130 MERCHANT STREET
HONOLULU, HAWAII 96813

MAIL ADDRESS: P. O. BOX 3196
HONOLULU, HAWAII 96801

FACSIMILE (808) 531-2628 | TELEPHONE (808) 547-5600 | TELEX 723264 JEXID

*A LAW CORPORATION

**HONA OFFICE
P.O. BOX 2649
KAILUA-KONA, HAWAII 96745
PHONE (808) 329-7131
FACSIMILE (808) 326-2364

COUNSEL
SANDRA W. ROTH
RONALD C. BROTH
E. LAWRENCE GAY

OF COUNSEL
JAMES M. EICHMANN
JOHN P. RUSSELL
H. DAVID KIDA*
WALTER S. ROSS
PAUL M. ANDERSON
MARSHALL M. GOODSILL*

June 26, 1989

Mr. Lawrence M. Noble
General Counsel
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Re: MUR 2892 Pacifico Creative Service, Inc.

Dear General Counsel Noble:

We represent Pacifico Creative Service, Inc. ("Pacifico Creative Service"), a Hawaii corporation, with regard to MUR 2892 and on behalf of Pacifico Creative Service, hereby respond to the Federal Election Commission's notification to Pacifico Creative Service, received on June 12, 1989, of a complaint ("Complaint") dated May 3, 1989, by the Maunawili Community Association, Anthony P. Locricchio, Victoria Creed, Karen Kosoc, and Donna Wong.

The Complaint alleges that on September 4, 1987, Pacifico Creative Service, as a "foreign based corporation," improperly donated $500.00 to "Friends of Fasi," the campaign committee for the Mayor of the City and County of Honolulu, Frank F. Fasi.

Pacifico Creative Service does not dispute that it made the donation to "Friends of Fasi." As the attached affidavit of Mr. Yozo Kojima, Administration Manager of the Hawaii office of Pacifico Creative Service, demonstrates, the donation was made in response to a fundraising event ticket solicitation by "Friends of Fasi" to Pacifico Creative Service. However, Pacifico Creative Service did not make the donation with any knowledge or reason to believe that the donation could in any way be

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construed as a violation of any law. (See Affidavit of Mr. Kojima).

For the following reasons, Pacifico Creative Service believes that the Federal Election Commission should not take further action with regard to MUR 2892.

First, the Complaint against Pacifico Creative Service should be dismissed because Pacifico Creative Service is not a foreign national within the meaning of 2 U.S.C. § 441e and 22 U.S.C. § 611(B). Pacifico Creative Service is a Hawaii corporation. Its corporate headquarters are in the United States and a substantial portion of its business is conducted in the United States. Further, although Pacifico Creative Service is owned by three foreign corporations, the funds for the $500 donation did not directly or indirectly come from any of its parent corporations.

Second, even if Pacifico Creative Service were a foreign national, which it is not, or in making the donation acted on behalf of a foreign national, which it did not, it is Pacifico Creative Service's position that 2 U.S.C. § 441e only prohibits "contributions" by foreign nationals to elections of "candidates" to federal political office. Section 441e does not expressly provide that it applies to state and local elections. Indeed, the terms "contributions" and "candidate" are defined by 2 U.S.C. §§ 431(2) and (A) in a manner which renders them applicable only to "elections for Federal Office". Furthermore, while 11 CFR § 110.4 may purport to prohibit contributions by foreign nationals to elections in connection with "any local, state or federal public office," there is no indication in either the Federal Election Campaign Act itself or its legislative history that the law was intended to be construed so broadly. See S. Rep. No. 677, 94th Cong., 2nd Sess. 2 (1976), reprinted in 1976 U.S. Code Cong. and Ad. News 930. Thus, 11 CFR § 110.4 is invalid because it is not authorized by statute. Moreover, if 11 CFR § 110.4 were authorized by statute, it would be unconstitutional, since it would constitute an improper congressional attempt to regulate state and local elections. See Oregon v. Mitchell, 400 U.S. 112, 117-118 (1970) (Black J. announcing judgment); see also Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986).

9 4 0 4 3 5 7 3 2 4 9

In conclusion, based on the foregoing reasons, Pacifico Creative Service respectfully requests that the Federal Election Commission not take action in MUR 2892.

Very truly yours,

GOODSILL ANDERSON QUINN & STIFEL

Russell S. Kato

Russell S. Kato

RSK:LKA:rr
Enclosures

A20136

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 2892

NAME OF COUNSEL: Russell S. Kato, Esq.

ADDRESS: Goodsill Anderson Quinn & Stifel
1600 Bancorp Tower
130 Merchant Street
Honolulu, Hawaii 96813

TELEPHONE: (808) 547-5600

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

June 26, 1989
Date

Yuzo Kojima
Signature

RESPONDENT'S NAME: Mr. Yuzo Kojima

ADDRESS: Pacifico Creative Services, Inc.
2270 Kalakaua Avenue, 16th Floor
Honolulu, Hawaii 96815

HOME PHONE:

BUSINESS PHONE: (808) 926-4500

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A19029

AFFIDAVIT OF YUZO KOJIMA

STATE OF HAWAII)
) SS.:
CITY AND COUNTY OF HONOLULU)

YUZO KOJIMA, being duly sworn under oath, deposes and says:

1. I am the Administration Manager of the Hawaii office for Pacifico Creative Service, Inc. ("Pacifico Creative Service") and have served in that capacity since July of 1987. I am providing this affidavit in support of Pacifico Creative Service' response to the Complaint pending before the Federal Election Commission in MUR 2892.

2. Pacifico Creative Service was incorporated under the laws of the State of Hawaii on July 29, 1970 and has done business in Hawaii and elsewhere as a travel and tour agency continually since then. It has a Hawaii regional office located at 2270 Kalakaua Avenue, 16th Floor, Honolulu, Hawaii 96815 and a corporate headquarters located in Los Angeles, California. It has fifteen branch offices throughout the United States.

3. Although Pacifico Creative Service is owned by three foreign corporations, it is not controlled by any of these foreign corporations. Pacifico Creative Service is a separate profit center from its parent corporations.

9 4 0 4 3 5 7 3 2 5 2

It keeps its own books and performs its own year end audit separate and apart from its parent corporations. Further, its financial involvement within the United States is substantial, with respect to both gross revenues generated from activities in the United States as well as assets held in the United States. The $500 donation made by Pacifico Creative Service in September of 1987 to "Friends of Fasi" came from funds generated solely by Pacifico Creative Service, not any of its parent corporations. The decision to make the $500 donation was made solely by the Hawaii regional office of Pacifico Creative Service, not any of its parent corporations (and not even its corporate headquarters).

4. In September of 1987, Pacifico Creative Service was solicited to purchase and did purchase two fundraiser tickets from "Friends of Fasi," Mayor Frank Fasi's campaign committee. Yet, Pacifico Creative Service had no knowledge or reason to believe that the purchase of these tickets could be potentially in violation of any state or federal law. Attached hereto as Exhibit "A" are copies of the two tickets purchased from "Friends of Fasi," a receipt from "Friends of Fasi" and a "Thank you" letter from Frank Fasi.

9 4 0 4 3 5 7 3 2 5 3

Further affiant sayeth naught.

YUZO KOJIMA

Subscribed and sworn to
before me this 26 day of
June, 1989.

Notary Public, State of Hawaii

My Commission Expires: 5-18-90

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9 4 0 4 3 5 7 3 2 5 5

A festive evening
with
exciting entertainment,
beverages, and delicious pupus
is planned for you ...
Come and Enjoy!

Paid for by Friends for Fasi
[illegible]
Honolulu, Hawaii 96817

An Evening with the Mayor

Saturday, August 29, 1987
Blaisdell Center Exhibition Hall
6 P.M. - 8 P.M.
$250 Per Person
Aloha Attire

№ 0012

Name: PACIFICO CREATIVE SERVICE
Address: 2270 Kalakaua Ave. STE. 1609
Honolulu, Hawaii 96815
Business Phone: 926-6000
Description: TRAVEL AGENCY
Amount Donated: $250.00

№ 0012

A festive evening
with
exciting entertainment,
beverages, and delicious pupus
is planned for you ...
Come and Enjoy!

Paid for by [illegible]
[illegible]
Honolulu, Hawaii 96817

11514

An Evening with the Mayor

Saturday, August 29, 1987
Blaisdell Center Exhibition Hall
6 P.M. - 8 P.M.
$250 Per Person
Aloha Attire

№ 0011

Name: PACIFICO CREATIVE SERVICE
Address: 2270 Kalakaua Ave. STE. 1609
Honolulu, Hawaii 96815
Business Phone: 926-6000
Description: TRAVEL AGENCY
Amount Donated: $ 250.00

№ 0011

To You, Friend, Aloha.

This is to say thanks. Thanks for your contribution in helping to make my recent fundraiser the most successful and the most satisfying ever. It gave me the chance to see and shake hands with so many friends. Words of encouragement, support and praise made me feel that the 37 years I've given to politics were and still are a privilege.

I will continue to justify your faith in me.
I will act to help meet the needs of our people and help make our Community the best in the world.
Warm personal regards.

Sincerely,

RECEIPT Date 9-8 1987 -3286

Received From PACIFICO CREATIVE SERVICE INC.

Address 2270 KALAKAUA AVE SUITE 1610 HONOLULU 96815

Dollars $ 500.00

For TICKETS 11-12

ACCOUNT			NOW PAID			FRIENDS FOR FASI
AMT. OF ACCOUNT			CASH			
AMT. PAID			CHECK	✓		By
BALANCE DUR			MONEY ORDER			

FRIENDS FOR FASI

000 000	87.8.31
4040	
500.00	
FASI FUNDRAISER	
AUG 31 PAID	NO. 11513

RECEIVED JUL 24 1989

TORKILDSON, KATZ, JOSSEM, FONSECA, JAFFE & MOORE
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING LAW CORPORATIONS
AMFAC BUILDING, 18TH FLOOR
700 BISHOP STREET
HONOLULU, HAWAII 96813-4187
TELEPHONE (808) 521-1051

CABLE ADDRESS "COUNSEL"
TELEX RCA (723) 8185 ATTNY-HR
TELECOPIER (808) 521-8239

KAILUA-KONA OFFICE
75-5751 KUAKINI HIGHWAY, SUITE 105
KAILUA-KONA, HAWAII 96740
TELEPHONE (808) 329-9561

MAUI OFFICE
2199 MAIN STREET, SUITE 105
WAILUKU, MAUI, HAWAII 96793
TELEPHONE (808) 242-9292

July 18, 1989

Howard R. Green, Esq.
Lynette Oka, Esq.
GREEN, NING, LILLY & JONES
P. O. Box 3439
Honolulu, Hawaii 96801

Re: Federal Election Commission Inquiry

Dear Mr. Green and Ms. Oka:

We have been retained by Nimitz Partners doing business as the Plaza Hotel in connection with the Federal Election Commission's investigation of our alleged illegal contribution to Friends of Frank Fasi in 1987-1988.

We have responded to the Commission's inquiry by denying the allegation because Nimitz Partners is not owned by foreign nationals. A copy of our response is included for your review.

Should you have any questions or if we can provide you with any further information, please call.

Sincerely yours,

TORKILDSON, KATZ, JOSSEM,
FONSECA, JAFFE & MOORE,
Attorneys at Law

Gregory M. Sato

GREGORY M. SATO

GMS/amb
Enclosure

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EXHIBIT K

TORKILDSON, KATZ, JOSSEM, FONSECA, JAFFE & MOORE
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING LAW CORPORATIONS
AMFAC BUILDING, 18TH FLOOR
700 BISHOP STREET
HONOLULU, HAWAII 96813-4187
TELEPHONE (808) 521-1051
CABLE ADDRESS "COUNSEL"
TELEX RCA (723) 8485 ATTNY-HR
TELECOPIER (808) 521-6239

KAILUA-KONA OFFICE
75-5751 KUAKINI HIGHWAY, SUITE 105
KAILUA-KONA, HAWAII 96740
TELEPHONE (808) 329-8561

MAUI OFFICE
2158 MAIN STREET, SUITE 105
WAILUKU, MAUI, HAWAII 96793
TELEPHONE (808) 242-9292

June 22, 1989

VIA FAX NO. (202) 376-5280

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

Re: MUR 2892 - Plaza Hotel

Dear Ms. Reilly:

We represent Nimitz Partners doing business as the Plaza Hotel in the above-entitled matter.

It has been charged that Nimitz Partners, doing business as the Plaza Hotel, violated Federal campaign spending regulations as a result of its donation of $2,000.00 on September 14, 1987 to the Friends of Fasi. It is alleged that this campaign contribution is "from foreign nationals and corporations either foreign in origin or United States formed subsidiary corporations controlled in whole or in substantive part by foreign nationals."

On behalf of Nimitz Partners, we deny these allegations because Nimitz Partners is neither a foreign corporation nor is it controlled "in whole or in substantive part by foreign nationals." The corporate and individual partners are U.S. citizens and we would challenge the complainants to prove otherwise.

Should you wish any additional information or have any questions, please do not hesitate to contact me.

Sincerely yours,

TORKILDSON, KATZ, JOSSEM,
FONSECA, JAFFE & MOORE,
Attorneys at Law

Gregory M. Sato (Jay)

Gregory M. Sato
Attorney for Nimitz Partners

GMS:jsy

bcc: Dan Kaneshiro

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SAAB-SCANIA
Saab-Scania of America, Inc.

RECEIVED

July 24, 1989

Howard R. Green, Esq.
Green, Ning, Lilly, & Jones
707 Richards Street
Suite 700
Honolulu, Hawaii 96813

Dear Attorney Green:

Thank you for your letter of July 14th concerning our contribution to Friends of Frank Fasi in connection with his 1989-88 political campaign. As Vice President, General Counsel and General Manager of the Scania Division of Saab-Scania of America, Inc., I made the ultimate decision to have the corporation, (a Connecticut corporation, wholly-owned by a Delaware corporation - Saab-Scania Holdings Corp. - which in turn is wholly-owned by Saab-Scania AB, a Swedish corporation) contribute to Mayor Fasi's campaign. Rolf Sundeman, Vice President of the Bus Division, a Swedish citizen who did not hold a green card, was originally solicited on behalf of Saab-Scania of America, Inc. However, since Rolf reported to me, he referred the decision to me. I am an American citizen and only U.S. corporate funds were used to make the contribution. Consequently, in accordance with your characterization of applicable law, I don't believe that Saab-Scania of America, Inc. made an illegal campaign contribution.

I will be happy to provide you with supporting affidavits and affidavits of our President Robert J. Sinclair in amplification of the responsibilities of Rolf Sundeman and myself. I can also supply affidavits from Mr. Sundeman although he retired and left the U.S. for Sweden more than one year ago. Please let me know how I can be of help in this matter. A copy of my recent letter to the Federal Elections Commission is enclosed.

Very truly yours,

John Phelps Clark
Vice President and
General Counsel

JPC:kr
Enclosure

EXHIBIT L

Saab Drive
PO Box 697
Telephone
203 795-5671
Telex
221 016
Facsimile
203 795-4451

9 4 0 4 3 5 7 3 2 5 9

Saab-Scania of America, Inc.

June 27, 1989

Patty Reilly, Esq.
Federal Election Commission
Washington, D.C. 20463

Re: MVR 2892
Saab-Scania of America, Inc.

Dear Ms. Reilly:

Enclosed please find Saab-Scania of America, Inc.'s Statement of Designation of Counsel together with a copy of all correspondence from our files relating to a campaign contribution to the "Friends for Fasi" in the amount of $2,500. It is my recollection that this contribution was made with advice of local counsel in Honolulu, although he might not have considered applicable provisions of Federal Election law. I do not recall considering any such matters as general counsel for Saab-Scania of America, Inc. or as general manager of our bus manufacturing operation at that time.

Saab-Scania of America, Inc. is a Connecticut corporation, all of the stock of which is held by Saab-Scania Holdings Corp., a Delaware corporation. All of the shares of various classes of Saab-Scania Holdings Corp. stock are held by Saab-Scania AB or its divisions or wholly-owned subsidiaries, all of which are Swedish corporations.

I do not believe that any of this material need be supplied under oath, but would be happy to do so, if you so desire.

Very truly yours,

John Phelps Clark
Vice President and
General Counsel

JPC:kr
Enclosures

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Servco Pacific Inc.

Serving the Pacific Since 1919
Oldest GM Dealer in Hawaii

RECEIVED JUL 28

July 26, 1989

OPERATING
SECTORS/GROUPS/DIVISIONS/STAFFS
CORPORATE HEADQUARTERS
General Management
Corporate Legal Staff
Corporate Secretary Staff
Corporate MIS Staff
Servco Investment Corp
Servco Foreign Sales Corp
CORPORATE ADMINISTRATIVE OPERATIONS
Corporate Control Group
Corporate Treasury Group
Automotive F & C Group
GMO F & C Group
International F & C Group
Human Resources Staff
RESEARCH, PLANNING & DEVELOPMENT OPERATIONS
Corporate Research & Planning Staff
Corporate Community Relations Staff
Real Estate Properties Group
Hawaiiana Advertising & P.R. Inc. (Group)
Evergreen Nurseries (Division)
Special Foods Division
AUTOMOTIVE HEADQUARTERS
Auto Merchandising & Marketing Group
T-H Group
AUTOMOTIVE GENERAL SECTOR
Auto Distribution Group
Auto Allied Sales Group
Marine & Recreation Group
AUTOMOTIVE RETAIL SECTOR
Windward Auto Group
HONOLULU/NI TOYOTA OPERATIONS
Honolulu Auto Group
Kauai Toyota Division
LEEWARD/CHEVROLET OPERATIONS
Waipahu Auto Group
Waipahu Auto Group
GENERAL MERCHANDISING OPERATIONS
GE — Hotpoint Major Appliance Group
RCA — GE Electronics Group
Special Markets Group
Sanyo Appliance & Electronic Group
Allied Sales Group
Allied Services Group
Gibsons Retail Group
FINANCIAL/SERVICES OPERATIONS
Servco Financial Corp. (Group)
Servco Securities Corp. (Division)
American Insurance Agency Inc. (Group)
Servco Insurance Agency Inc. (Division)
INTERNATIONAL SECTOR
Pacific International Company, Inc. (HQ)
Guam Retail Group
Pacific Motors Corp. (Group)
Pacific Financial Corp. (Group)
Pacific Wholesalers (Division)
Pacific International Marianas, Inc. (Division)
Pacific Marshalls, Inc. (Division)
Hawaii/Cal Group
Servco Japan Inc. (Division)
Servco Intercontinental (Division)

Howard R. Green, Esq.
Green, Ning, Lilly, & Jones
707 Richards Street, Suite 700
Honolulu, Hawaii 96813

Dear Mr. Green:

This is in response to your letter dated July 14, 1989, regarding a campaign contribution made by this company to Friends of Frank Fasi in 1987-88.

Last month we received a letter from the FEC regarding this contribution. Enclosed for your information and reference is a copy of our response.

Please let me know if you have any further questions.

Sincerely,

Sharleen H. Oshiro
Vice President and
Legal Counsel

Enclosure

cc: G. Fukunaga

Honolulu ■ Oahu ■ Hawaii
Kauai ■ Maui
Guam ■ Saipan ■ Majuro
Daly City ■ Sacramento
■ Osaka ■

EXHIBIT M

Pioneer Plaza • 900 Fort St. Mall, Suite 500 • Honolulu, Hawaii 96813
P.O. Box 2788 • Honolulu, Hawaii 96803 • Telephone: (808) 521-6511
Cable: SERVCOPAC HONOLULU • Telex: SVPAC 7430167 • Fax: (808) 523-3937

June 19, 19[illegible]

Patty Reilly, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D. C. 20463

Re: MUR 2892
Servco Pacific Inc.

Dear Ms. Reilly:

This is in response to the June 6, 1989 letter from Lawrence M. Noble by Lois G. Lerner of the Office of the General Counsel for the Federal Election Commission and in followup to our telephone conversation this date.

Pursuant to your instructions, enclosed please find an affidavit by our corporate secretary attesting to the fact that Servco Pacific Inc. is a Hawaii corporation and wholly owned by residents and citizens of the State of Hawaii and United States of America.

I trust that this satisfies the Commission that no action should be taken against Servco Pacific Inc. I assume that your office will recommend the Commission find no reason to believe that the complaint sets forth a possible violation of the Act and, accordingly, that the Commission close the file in the matter.

I look forward to receiving notice from your office that this matter as it concerns Servco Pacific Inc. has been closed.

Thanking you in advance for your attention to this matter, I remain,

Sincerely,

Shaileen Oshiro
Shaileen N. Oshiro
Vice President and
Legal Counsel

Enclosure

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State of Hawaii

City and County of Honolulu

A F F I D A V I T

EDITH ENDO, being first duly sworn, deposes and says:

1. That she is the corporate secretary of Servco Pacific Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Hawaii, with its principal office at 900 Fort Street Mall, City and County of Honolulu, State of Hawaii, and in whose behalf she makes this affidavit.

2. That said corporation is not a foreign corporation, but as stated above, is a Hawaii corporation; and

3. That said corporation is a closely held corporation, whose shareholders are all residents and citizens of the State of Hawaii and the United States of America.

In witness whereof, said corporation has caused the above instrument to be executed in its behalf, pursuant to authority of its board of directors, by its secretary and its corporate seal to be hereunto attached, attested by its secretary this 19th day of June, 1989.

SERVCO PACIFIC INC.

By _____
Its Corporate Secretary

(Corporate Seal)

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STATE OF HAWAII,
City and County of Honolulu } ss.

On this 19th day of June, A. D. 1989, before me appeared EDITH M. ENDO

to me personally known, who, being by me duly sworn, did say that they are the Corporate Secretary

respectively of Servco Pacific Inc

and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said EDITH M. ENDO acknowledged said instrument to be the free act and deed of said corporation.

Notary Public,
State of Hawaii.

My Commission Expires 19 7/10/91

9404357332 64

ATTORNEYS AT LAW

Ikazaki Devens Lo Youth & Nakano

Suite 1600 Central Pacific Plaza
220 South King Street
Honolulu, Hawaii 96813
Telephone (808) 521-1456
Cable Address "Whiteacre"
Fax (808) 538-3289

*Herbert T. Ikazaki
*Paul Devens
*Richard C. Lo
*Wilfred H. C. Youth
*James A. Nakano
*Russell K. Saito
Paula Devens
James H. Q. Lee
Thomas J. Wong

Ann L. Kurihara
Stanley L. Ching
Vladimir Devens
John T. Hoshibata
Russell H. Ando
**Rew K. Ikazaki

*A Law Corporation
**Licensed to practice in California only

RECEIVED JUL 25 1989

July 24, 1989

Howard R. Green, Esq.
Green, Ning, Lilly, & Jones
P. O. Box 3439
Honolulu, Hawaii 96801

Re: Longevity International Enterprises Corporation - Federal Election Commission

Dear Mr. Green:

Please be advised that we represent Longevity International Enterprises Corporation ("Longevity International") and our client is in receipt of your letter in regards to the Federal Election Commission.

Please be advised that we have responded to the Federal Election Commission on behalf of our client. Enclosed for your information is a copy of our response on behalf of Longevity International.

Very truly yours,

IKAZAKI, DEVENS, LO, YOUTH & NAKANO

By _____
Thomas J. Wong

TJW:ln
Enclosure
cc: Longevity International Enterprises Corporation

2404357326 5

EXHIBIT N

Ikazaki
Devens
Lo
Youth
&Nakano

Suite 1600 Central Pacific Plaza
220 South King Street
Honolulu, Hawaii 96813
Telephone (808) 521-1456
Cable Address "Whiteacre"
Fax (808) 538-3289

*Herbert T. Ikazaki
*Paul Devens
*Richard C. Lo
*Wilfred H. C. Youth
*James A. Nakano
*Russell K. Saito
Paula Devens
James H. Q. Lee
Thomas J. Wong

Ann L. Kurihara
Stanley L. Ching
Vladimir Devens
John T. Hoshibata
Russell H. Ando
**Rew K. Ikazaki

*A Law Corporation
**Licensed to practice in California only

June 20, 1989

OFFICE COPY

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Lawrence Noble, Esq.
General Counsel
Lois G. Lerner, Esq.
Associate General Counsel
Federal Election Commission
999 E. St. N.W.
Washington, D.C. 20463

Re: MUR 2892
Longevity International Enterprises Corporation

Dear Sir and Madam:

The undersigned is the attorney for Longevity International Enterprises Corporation ("Longevity") and this letter constitutes Longevity's answer to the complaint, dated May 9, 1989, filed by Mr. Anthony P. Locricchio, the attorney for the various complainants listed in his complaint.

I. Allegations made by Mr. Locricchio.

With respect to the complaint filed, the allegation, as it relates to Longevity, is made at count sixty-eighth wherein Longevity made a contribution of $250 to Mayor Frank Fasi on or about September 4, 1987. The alleged violation claimed is by making this contribution, Longevity violated 2 U.S.C. 441E(a), which apparently prohibits foreign nationals from making political contributions.

First, Longevity received the complaint from your office on June 13, 1989.

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Second, with respect to counts one through sixty-seven, Longevity has no knowledge as to the truth or falsity of the allegations made in these specific counts.

Third, for the reasons set forth in this letter, Longevity denies the allegation that the contribution made was a violation under the Federal Election Campaign Act ("Act").

II. Background.

A. Status of Longevity.

Longevity is a California corporation, licensed to do business in the State of Hawaii. Enclosed with this answer is a copy of Longevity's annual corporate license and exhibit, which is filed with the State of Hawaii's Department of Commerce and Consumer Affairs. The current year's license and exhibit has been filed with the State of Hawaii but Longevity has not yet received back a file-stamped copy. Also enclosed is Longevity's filing with the State of California showing that it is a valid California corporation.

Longevity's main business in the State of Hawaii is the owner and landlord of a shopping complex known as The Chinese Cultural Plaza ("The Cultural Plaza"), located at 100 North Beretania Street. The Cultural Plaza consists of small shops and restaurants.

B. The Contribution Made by Longevity.

With respect to the contribution, which is the subject of the allegation of the complaint, according to Longevity's personnel, one of the tenants of the shopping center had asked if they could purchase tickets for a fundraiser that Mayor Fasi was having. The contribution was then made in connection with a fundraiser for the reelection of Mayor Frank Fasi. At no time did Longevity solicit any contributions and if this tenant did not request Longevity to make such a contribution, the contribution would not have been made.

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III. Argument.

A. The Contribution Made was Not to a Candidate who was Running for a Federal Office.

The complaint filed apparently is alleging that 2 U.S.C. 441E(a) has been violated because it is unlawful for a foreign national to make any contribution in connection with an election to any political office.

It appears that while 2 U.S.C. § 441E(a) does not state whether it applies to state and local elections, the terms "contribution" and "candidates" are defined under the Act to apply to candidates and elections for federal office.

As stated previously, and as the facts show, the contribution made in this particular case was to that of Mayor Fasi, who, at the time, and was a candidate of municipal office, and not a candidate for any federal office.

Up until this time, the State of Hawaii campaign spending commission also had interpreted the Act as not applying to local elections. Enclosed for your information is a memorandum prepared by the State of Hawaii's Attorney General's office in regards to political contributions from "foreign nationals" in which this point was covered and raised.

B. Longevity is a California Corporation Licensed to do Business in the State of Hawaii with its Principal Place of Business in the State of Hawaii.

Under the definition of foreign national under 22 U.S.C. 611(b), if a corporation is organized under or created by the laws of a state of the United States and has its principal place of business within the United States, it is not a foreign national under this Act.

As stated previously, and as we have submitted, Longevity is a California corporation and is licensed to do business in the State of Hawaii. Its principal place of business is in the State

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of Hawaii by owning and operating The Cultural Plaza shopping center. As such, for purposes of the Act, Longevity, being a California corporation authorized to do business in the State of Hawaii, is not a foreign national as defined under the Act.

IV. Conclusion.

For the foregoing reasons, it is Longevity's position that the complaint, as alleged, is without merit and the complaint should be dismissed.

If there are any further questions, please feel free to contact the undersigned.

Very truly yours,

IKAZAKI, DEVENS, LO, YOUTH
& NAKANO

By _____
Thomas J. Wong

TJW:ln
Enclosures
cc: Longevity International
Enterprises Corporation

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MAIL ROOM

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HONOLULU, HAWAII 96813-2916
TELEPHONE (808) 526-9566
FACSIMILE (808) 538-3840

July 2, 1990

Mr. Lawrence M. Noble
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
LEGAL DIVISION
90 JUL -9 PM 3: 40

Re: MUR 2892 - Hiroshi Kobayashi

Dear Mr. Noble:

Transmitted herewith please find a copy of Mr. Hiroshi Kobayashi's green card and an affidavit of Mr. Kobayashi attesting to the fact that he is a permanent resident alien.

Mr. Kobayashi's home address and telephone number are 921 Aliamanu Place, Honolulu, Hawaii, 96818, and (808) 422-7623, respectively. His business address and telephone number are 2850 Paa Street, Room 219, Honolulu, Hawaii, 96819, and (808) 834-4600, respectively. He is currently the President of Honolulu Warehouse Co.

Based on a June 25th conversation with Mr. Michael Troy, we are of the understanding that Mr. Kobayashi's status as a permanent resident alien will absolve him of this matter.

Very truly yours,

MATSUBARA, LEE & KOTAKE

Mervyn M. Kotake

Mervyn M. Kotake

Enclosures

cc: Mr. Hiroshi Kobayashi
Neil Hulbert, Esq.
Paul Alston, Esq.
(cc w/enclosures)

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	MUR 2892
	)	
	)	AFFIDAVIT OF HIROSHI
	)	KOBAYASHI

AFFIDAVIT OF HIROSHI KOBAYASHI

STATE OF HAWAII	)	
	)	ss.
CITY AND COUNTY OF HONOLULU	)	

HIROSHI KOBAYASHI, duly sworn on oath deposes and says:

1) That he is a permanent resident as defined in 8 U.S.C. section 1101(a)(20) and is registered with the Immigration and Naturalization Service

2) That he attained his status as a permanent resident on or about April 3, 1973

Further Affiant Sayeth Naught.

HIROSHI KOBAYASHI

Subscribed and sworn to before me this 3rd day of July, 1990.

Notary Public, State of Hawaii

My commission expires: 11/6/92

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OGC 6864

J. RUSSELL CADES
WILLIAM L. FLEMING
HAROLD B. WRIGHT
JAMES S. CAMPBELL
A. SINGLETON CAGLE
ROBERT B. BUNN
WILLIAM M. SWOPE
DONALD A. BECK
DOUGLAS E. PRIOR
E. GUNNER SCHULL
THOMAS P. HUBER
MICHAEL P. PORTER
DONALD E. SCEARCE
RICHARD A. HICKS
ROGER H. EPSTEIN
JEFFREY S. PORTNOY
EDWARD H.L. BOYLE
BERNICE LITTMAN
NICHOLAS C. DREHER
MARK A. HAZLETT
PHILIP J. LEAS

DAVID C. LARSEN
STEPHEN B. MacDONALD
LARRY T. TAKUMI
WILLIAM A. CARDWELL
C. MICHAEL HARE
RICHARD R. CLIFTON
JOHN R. AUBE
ROY A. VITOUSEK III
STANLEY M. KURIYAMA
NELSON N. S. CHUN
DARRYL H. W. JOHNSTON
VITO GALATI
CARY S. MATSUSHIGE
DAVID SCHULMEISTER
THOMAS E. CROWLEY III
LORRAINE H. AKIBA
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GRACE NIHEI KIDO
KEITH A. LEE
STEWART J. MARTIN
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DONNA Y. L. LEONG
PATRICIA J. McHENRY
K. JAMES STEINER, JR.
J. ROBERT ARNETT II
DAVID F. E. BANKS
G. HISAE ISHII CHANG
J. THOMAS MALONEY, JR.

VALERIE SMITH BOYD
BLANE T. YOKOTA
ERNEST H. NOMURA
DANIEL A. MORRIS
JEFFREY D. WATTS
THERESA A. FISHER*
GLENN H. KOBAYASHI
CAROL L. W. HEE
DAVID J. GIERLACH
LANCE A. LOPES
ERIC N. ROOSE
MARJORIE A. LAU
LAURIE A. KURIBAYASHI
MICHAEL K. KIRSCHNER
JAMES H. ASHFORD
EDITH K. KAWAI RADL
ANN M. MISURA

*Not Admitted to Bar

C. FREDERICK SCHUTTE
1921-1988

OF COUNSEL
MILTON CADES

WRITER'S DIRECT DIAL NUMBER
(808) 521-9332

July 3, 1990

Telecopied and Mailed

Federal Election Commission
Washington, D.C. 20463
Attn: Michael Troy

Re: MUR 2892
ANA Hotels Hawaii, Inc.("Respondent")

Gentlemen:

On behalf of the Respondent, we are transmitting the enclosed answers to interrogatories in response to your inquiry in the above-referenced matter.

These answers to interrogatories confirm the position stated in our initial letter response dated July 31, 1989, that the funds for political contributions made by the Respondent have never been provided by foreign nationals. Millie M. Ludwick, a United States citizen and full-time resident of the State of Hawaii, has had sole discretion, in her capacity as the Owner's Representative, to approve all contributions made to any politic candidate, without consultation with or approval by any foreign nationals. Ms. Ludwick is the Respondent's only management representative in Hawaii, and as the Owner's Representative, she oversees the operation of the Sheraton Makaha Resort Hotel, which is operated by the Sheraton Corporation pursuant to a hotel management contract. During the period covered by the interrogatories, the hotel has been operating at a profit, and hence, the funds used for the political contributions were not derived from any grants, loans or subsidies from the owners of the company. Under the Federal Election Commission's own rulings, contributions made under these circumstances do not violate the federal campaign election laws. The FEC has clearly determined that a domestic corporation, such as Respondent, is not a foreign national for the purposes of U.S.C. § 441(e) even if it is a

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wholly-owned subsidiary of a foreign corporation, so long as the parent corporation does not provide funds for the political contribution and the subsidiary is not controlled by the parent with respect to the subsidiary's decision to make a contribution. A.O. 1985-3 Fed. Election Camp. Fin. Guide (CCH) ¶ 5809 (March 4, 1985); A.O. 1981-36, December 8, 1981. A review of the facts in this case will demonstrate that no further action should be taken against the Respondent and that no penalties are warranted.

Pursuant to 11 C.F.R. § 111.18(d), Respondent hereby requests pre-probable cause conciliation. We believe that the answers presented to your questions are complete and demonstrate that pre-probable cause conciliation should be pursued in this case.

If you have any questions, please contact the undersigned at (808) 521-9332. Thank you for your kind assistance.

Sincerely,

Larry T. Takumi
for
CADES SCHUTTE FLEMING & WRIGHT

Enc.
clwh/ltrs/fd.elc.com

cc: Millie M. Ludwick

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1. State your name, local address, business, and where you are incorporated.

Ans:

Name: ANA Hotels Hawaii Inc.

Address: 84-626 Makaha Valley Road
Waianae, Hawaii 96792

Business: Resort Hotel

State of Incorporation: Hawaii

2. Identify all officers and directors.

Ans:

Officers:

Mr. Shigeya Goto, President
Ms. Millie M. Ludwick, Secretary
Mr. Seiji Nakashima, Treasurer

Directors:

Shigeya Goto
Seiji Nakashima
Franklin Tokioka
Koichi Fujiwara
Isao Kasuga
Shinichi Sato

Note: All of the foregoing officers and directors are citizens of Japan, except for Millie M. Ludwick and Franklin Tokioka, both of whom are United States citizens and full-time residents of the State of Hawaii.

3. Identify all management personnel.

Ans:

Management Personnel: Owner's Representative - Millie M. Ludwick, United States citizen and full-time resident of the State of Hawaii

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4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

Ans:

ANA Hotels Hawaii Inc. is a subsidiary of ANA Enterprises, Ltd. and All Nippon Airway Co., Ltd. (ANA Enterprises, Ltd. is a subsidiary of All Nippon Airways Co., Ltd.)

Shares:	ANA Enterprises, Ltd.	60.9%
	All Nippon Airways Co., Ltd.	39.1%

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

Ans:

Mayor Frank Fasi	07/27/87	$250.00 refunded	11/14/89
Friends of Senator Joe Kuroda	06/12/86	105.00	
Representative Henry Peters	07/18/86	100.00	
Neil Abercrombie	06/14/87	250.00	
Senator James Aki	05/09/89	100.00	

Not required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these person are not noted in your answer to interrogatories one or two, identify such persons.

Ans:

Millie M. Ludwick, Corporate Secretary and the Owner's Representative, has been solely responsible for making all decisions concerning the contributions. These decisions were made without any approval from or consultation with any officer or director of the company who is a foreign national.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

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Ans:

The funds for making political contributions were derived from the operations of the hotel, rather than any special subsidy, grant or loan from the owners.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

Ans:

We do not maintain a political action committee.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

Ans:

We do not have, and never have maintained, a pool of funds specified for election activity. A yearly budget for all contributions of any type to be made by the office of ANA Hotels Hawaii, Inc. is approved by the owners. However, Millie M. Ludwick, the Owner's Representative who is a United States citizen, has total discretion over how the donations are made. For the past several years, the amount of the contribution budget has been very minimal, i.e., 1986 - $3,200; 1987 - $_____(* subject to further verification); 1988 - $1,000; 1989 - $1,000; 1990 - $3,700. The contribution budget for 1990 was increased not for political contributions, but for community contributions. Because of our involvement with the community, we are solicited for numerous donations and contributions. Our budget does not allow us to make major contributions.

In fact, when making the budget, we have never budgeted for political contributions. Our contributions are normally made to charities within the local area. Past contributions include donations to the Waianae Girls' Soccer Team, the Aloha United Way, the Penny Carnival, Muscular Dystrophy, and various Senior Citizens' Projects.

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10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

Ans:

Millie M. Ludwick, Owner's Representative. Employed since 1980 with ANA Hotels Hawaii, Inc. Other positions held with ANA Hotels Hawaii, Inc.: Administrative Assistant, Executive Assistant, and Liason Officer.

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OGC 6915

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Cheryl K. Kakazu *
James Kawashima *
Bert T. Kobayashi, Jr. *
John T. Komeiji *
Wray H. Kondo *
Benjamin A. Kudo *
Dale W. Lee *
Ronald Y. K. Leong *
Michael A. Loruso *
Lex R. Smith *
Kenneth Y. Sugita *
Robert T. Takamatsu *
Jeffrey N. Watanabe *
Cynthia Winegar *
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Wendell H. Fuji
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July 6, 1990

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Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Attn: Patty Reilly

Re: MUR 2892
Mauna Lani Resort, Inc.
Mauna Lani Resort PAC

Dear Ms. Reilly:

Our law firm has been retained by Mauna Lani Resort, Inc. and Mauna Lani Resort PAC (collectively referred to as "Mauna Lani") to respond to the above referenced matter.

By letter dated May 21, 1990, we were informed that the Commission found that there is reason to believe that Mauna Lani Resort, Inc. violated 2 U.S.C. §441(e). Following my written request dated June 1, 1990, the Office of General Counsel granted an extension until July 10, 1990 to file this response.

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OFFICE OF GENERAL COUNSEL

For the following factual and legal reasons, we respectfully disagree that Mauna Lani Resort, Inc. committed any violation of 2 U.S.C. §441(e) and believe that no further action should be taken against it.

ISSUES:

As applied to Mauna Lani, the complaints brought by Anthony P. Locricchio and others in MUR 2846 and MUR 2896 essentially allege that contributions in violation of the

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Federal Election Campaign Act were made to the state campaign of Governor John Waihee by a domestic Hawaii corporation which is a wholly owned subsidiary of foreign corporations.

The sole issue as applied to Mauna Lani is whether the Federal Election Campaign Act prohibits a domestic Hawaii corporation from making state campaign contributions if it is a wholly owned subsidiary of foreign corporations.

FACTS:

Mauna Lani Resort, Inc. is a Hawaii corporation with its principal place of business in Hawaii. The majority of its stock is owned by the Tokyu Group and Mitsubishi Corporation which are foreign corporations with their principal places of business in Japan. See attached Answers of Interrogatories (question No. 4) for a specific breakdown of the ownership interests.

Since 1984, all campaign contributions by Mauna Lani Resort, Inc. have been made through the Mauna Lani Resort PAC which is organized under the Hawaii Campaign Spending Law and is funded entirely by Mauna Lani Resort, Inc. without any contributions from individual officers or employees. Mauna Lani Resort PAC made campaign contributions in state and local elections, but not in federal elections.

The decisions regarding the political contributions identified in the Complaint were made by Francine Duncan, Mauna Lani's Vice President of Communications, who is and always has been an American citizen. See attached Answers to Interrogatories. Ms. Duncan determined who would receive political contributions and what amounts would be contributed, without any control or direction by foreign nationals or restrictions as to budgeted amounts. The only other person who was involved in the decisions to make political contributions was another U.S. citizen, Thomas Yamamoto, Executive Vice President until September 15, 1989.

No foreign nationals were involved in the decision-making process and were only involved in the manual procedure of issuing the checks. Since Mauna Lani Resort PAC is fully funded by Mauna Lani Resort, Inc., funds are transferred from the latter into the former's separate bank account. The procedure followed to obtain the funds from Mauna Lani Resort, Inc. was the same as used by Mauna Lani

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for all other corporate check disbursements in its operations. In accordance with normal accounting security measures, Mauna Lani's normal check disbursement process requires a written request to be submitted by the department head, which is then reviewed by the Corporate Secretary, Controller, and Treasurer. The actual checks for both the Mauna Lani Resort, Inc. and Mauna Resort PAC were co-signed by the President and Treasurer. Except for the Vice President of Corporate Communications and the Controller, the other persons involved in the check disbursement procedures were Japanese citizens working in Hawaii on business visas but without permanent resident alien status.

Notwithstanding this limited involvement of foreign nationals in the disbursement process, the actual decision-making and control was vested solely in the Vice President of Corporate Communications, and the Executive Vice President during his employment with Mauna Lani, both of whom are American citizens. None of the American citizens' decisions to make campaign contributions was initiated, altered or rejected by any foreign national.

In accordance with the state law, Mauna Lani reported campaign contributions made by it to the State Campaign Spending Commission.

LAW:

1. A Federal Prohibition Against Foreign Contributions in State and Local Elections is an Unconstitutional Infringement of the States' Tenth Amendment Rights.

The Tenth Amendment to the U.S. Constitution states:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The Tenth Amendment has been interpreted by the U.S. Supreme Court as reserving to the States the power to regulate state and local elections. In Oregon v. Mitchell, 400 U.S. 112, 91 S. Ct. 260, 27 L.Ed.2d 272 (1970), the Supreme Court struck down a provision of the federal Voting Rights Act which had lowered the voting age from 21 to 18 in state and local elections. While recognizing that Congress has ultimate supervisory power over congressional, presidential and vice-presidential elections, the plurality opinion of the Court written by Justice Black stated:

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> On the other hand, the Constitution was also intended to preserve to the States the power that even the Colonies had to establish and maintain their own separate and independent governments, except insofar as the Constitution itself commands otherwise. ... No function is more essential to the separate and independent existence of the States and their governments than the power to determine within the limits of the Constitution the qualifications of their own voters for state, county, and municipal offices and nature of their own machinery for filling local public offices. ... It is a plain fact of history that the framers never imagined that the national Congress would set the qualifications for voters in every election from President to local constable or village alderman. It is obvious that the whole Constitution reserves to the States the power to set voter qualifications in state and local elections, except to the limited extent that the people through constitutional amendments have specifically narrowed the powers of the States. Amendments Fourteen, Fifteen, Nineteen, and Twenty-four, each of which has assumed that the States had general supervisory power over state elections, are express limitations on the power of the States to govern themselves. And the Equal Protection Clause of the Fourteenth Amendment was never intended to destroy the States' power to govern themselves... In interpreting what the Fourteenth Amendment means, the Equal Protection Clause should not be stretched to nullify the States' powers over elections which they had before the Constitution was adopted and which they have retained throughout our history.

Oregon v. Mitchell, supra, 400 U.S. at 125-126, 27 L.Ed 2d at 281-282.

The particular States' right issue in the Oregon case was the right to set voter qualifications in state and local elections which is specifically recognized by Article I, §2 of the Constitution. The Supreme Court, however, also generally recognized the States' rights under the Tenth Amendment to "establish and maintain their own separate and independent governments," including the right to generally govern their won state and local elective process, unless specifically limited otherwise by other provisions of the Constitution.

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Only where the States' Tenth Amendment right to govern state and local elections conflicted with other rights expressly guaranteed by the Constitution did the Supreme Court in Oregon find it necessary to override the States' sovereign powers. Because the right to vote regardless of race or color is expressly provided by the Fifteenth Amendment to the U.S. Constitution, the Court validated another portion of the federal Voting Rights Act which prohibited states from using literacy tests in "any Federal, State, or local election." 42 U.S.C. §1937b(a). The Court reasoned that Congress could have found that the literacy tests were being used to discriminatorily disfranchise voters on account of their race in violation of the right to vote guaranteed by the Fifteenth Amendment and that nationwide discrimination required nationwide legislation. In the absence of such a specific countervailing provision of the Constitution, however, it is doubtful that the literacy test ban provision under federal law would have prevailed over the States' Tenth Amendment right to control its elective process. See 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 16-18 (1974).

The mere fact that there is foreign involvement is not sufficient justification for the federal government to override a State's Tenth Amendment right to govern its own elective process. Article I, §§9 and 10 of the U.S. Constitution gives the federal government the exclusive right to control immigration and naturalization, regulate foreign commerce, enter into foreign treaties and agreements, or lay duties on imports and exports. See Toll v. Moreno, 458 U.S. 1, 10 (1982). The Constitution, however, does not give the federal government exclusive control over all matters involving foreigners. Since the Tenth Amendment specifically reserves to the States whatever "powers not delegated to the United States by the Constitution, nor prohibited by it to the States," the States have the right to regulate foreign nationals in other areas not expressly delegated to the federal government.

For example, in Terrace v. Thompson, 263 U.S. 197, 44 S.Ct. 15, 68 L.Ed. 255 (1923), the U.S. Supreme Court recognized the States' right to control alien land ownership within its borders and upheld a Washington state constitutional provision which prohibited the ownership of land by aliens other than those who in good faith have declared their intention to become citizens of the United States. The Court reasoned that the 14th Amendment:

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> does not take away from the state those powers of police that were reserved at the time of the adoption of the Constitution.... And in the exercise of such powers the state has wide discretion in determining its own public policy and what measures are necessary for its own protection and properly to promote the safety, peace and good order of its people. And, while Congress has exclusive jurisdiction over immigration, naturalization and disposal of the public domain, each state, in the absence of any treaty provision to the contrary, has power to deny aliens the right to own land within its borders.

Id., 263 US. at 217. Although the Supreme Court did not specifically refer to the Tenth Amendment, it expressly recognized a state's "reserved" right to determine its own public policy and take actions to promote "the good order of its people."

If a State has the reserved right to control alien land ownership within its own borders, it would similarly have the right to determine public policy in matters concerning its own governance, i.e., whether or not foreign contributions will be permitted with respect to its own state and local elections. In the absence of a Constitutional provision to the contrary, the federal government is without authority to interfere with the States' Tenth Amendment right to control state and local elective processes. As evidenced by the States' right to regulate alien land ownership, there is no constitutional provision granting the federal government exclusive control over <u>all</u> matters relating to foreign nationals.

The federal government's right to control foreign policy is specifically limited by the Constitution to those matters relating to immigration and naturalization, foreign treaties and agreements, foreign commerce and import or export duties. Since the States have no power to exercise these exclusive federal rights, the manner in which state and local elections are financed can have no impact on these matters which have been delegated to the federal government. To paraphrase the decision in <u>Oregon v. Mitchell</u>, the federal government's foreign policy powers should not be stretched to nullify the States' powers over their own state and local elections which they had before the Constitution was adopted and which they have retained throughout our history.

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The Supreme Court's Oregon decision is clearly on point and instructive with its specific discussion of the States' Tenth Amendment right to establish and maintain their own separate and independent governments, including the power to control state and local elections.

The decision cited by the OGC, South Carolina v. Baker, 108 S.Ct. 1355 (1988), is inapplicable. South Carolina was cited for the proposition that the "States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina, however, involved a federal law that regulated the form in which state bonds were issued, and the case had nothing to do with federal regulation of state or local elections. Its references to Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528, 105 S.Ct. 1005, 83 L.Ed 2d 1016 (1985), are also inapplicable since Garcia dealt with the federal imposition of minimum wage and overtime pay requirements upon mass transit systems run by state and local governments but extensively funded by the federal government. The States' interests involved in those cases were clearly different from the fundamental States' right involved here to regulate their own state and local elections in order to provide for their separate and independent governance.

Given the absence of any constitutional authority on the part of the federal government to regulate foreign participation in state and local elections, the State's Tenth Amendment right to exercise the powers reserved to them should be respected and the Commission, through its regulations, should not interfere with the States' right to determine public policy on matters concerning their own elections and governance.

2. Under the Clear Language of the Law, the Prohibition Against Foreign Contributions Contained in the Federal Election Campaign Act Should be Applied Only to Federal Campaign and not to State and Local Elections.

The Federal Election Campaign Act clearly prohibits contributions by foreign nationals to candidates for federal office. Section 319 of the Act (2 U.S.C. §441d) states in relevant part:

> Contributions by foreign nationals. (a) It shall be unlawful for a foreign national directly or through any other person to make any

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> contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

This prohibition on foreign contributions, however, should be applied only to federal campaigns, and not to state or local elections. The Federal Election Campaign Act by its title as well as the plain language of its provisions was intended to address only federal elections. For example, the definition of "contributions" refers to "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." Sec. 301(8)(A) (2 U.S.C. 431) (emphasis added). Similarly, in prohibiting foreign contributions "in connection with any primary election, convention, or caucus held to select candidates for any political office," the Act has defined "candidates" to mean "an individual who seeks nomination for election, or election, to Federal office." Sec. 319 (2 U.S.C. §441d); Sec. 301(2) (2 U.S.C. §431) (emphasis added).

Most importantly, the preemption clause at Section 403 of the Act (2 U.S.C. 454) does not propose to preempt state law with respect to state or local elections and provides, "The provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office." (Emphasis added). Likewise, the definition of "Federal office" says nothing of state or local public offices and is limited to the "office of the President or Vice President, or of Senator or Representative in, or Delegate or Resident commissioner to, the Congress." Section 301(3) (2 U.S.C. §431).

Because the Federal Election Law does not specifically prohibit foreign contributions to be made in state or local elections and there is no showing that the enforcement of another constitutional provision requires the abrogation of the States' rights which have been reserved under the Tenth Amendment, the FEC Act's prohibition of foreign contributions should be narrowly read to apply only in federal elections, and should not be unconstitutionally extended to cover state or local elections.

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3. The Legislative History of the Federal Election Law Does Not Clearly Evidence Congress's Intent to Apply to the Foreign Contribution Ban in State and Local Elections.

a. The Fact that Section 441(b)(a) Prohibits Contributions by National Banks in "Any Political Office" Does Not Mean that Foreign Contributions Should be Banned in State and Local Elections.

The Office of the General Counsel argues that the phrase "any political office" appears in only two places in the FECA at sections 44le and 441(b)(a). Since the legislative history to section 441(b)(a) clearly evidences Congress's intent to prohibit contributions by nationally chartered banks and corporations in any "national, state, county, township, or municipal" elections, the OGC contends that a similar interpretation should be given to the term, "any political office" as used in section 44le.

While this is a compelling argument on its face, the entire legislative history read as a whole clearly shows Congress's recognition of its limitations in matters concerning state chartered corporations in non-federal elections as compared to its plenary authority over nationally chartered corporations and federal elections. Senate Report No. 3056 accompanying Senate Bill 4536 of the 59th Congress, 1st Session (1906) expressly recognized that the statutory predecessor to §441b (18 U.S.C. §610) contained two parts: one that prohibited nationally chartered banks and corporations created by the laws of Congress from giving money in any election to any political office, and another provision that prohibited state chartered corporations from contributing to only those federal elections at which Presidential and Vice-Presidential electors or a Representative in Congress is to be voted for, or any election by any State Legislature of a United States Senator.

Senate Report No. 3056 explains that the first provision of Senate Bill 4563 "deals only with corporations organized under the laws of the United States. It has no reference to and does not affect in any way corporations organized under the laws of the different states." The Report further explained that the second proposition, "unlike the first which applied only to corporations created under the laws of Congress, applies to all corporations, no matter under what laws created; but that while the first proposition prohibits Federal corporations from contributing to any election, the second proposition prohibits only contributions in connection with Federal elections[.]"

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In making the distinction between the two propositions, Congress implicitly recognized its limitations in regulating matters reserved to the States. While Congress undoubtedly has the right to "restrict and regulate creatures of its own creation" as well as matters affecting federal elections, Congress respected the States' right to regulate corporations chartered under their own laws and did not attempt to interfere with state and local elections.

Congress's rationale for prohibiting national banks and corporations from contributing in any federal, state and local election would not necessarily apply to foreign contributions. Unlike its plenary powers over creatures of its own creation, Congress does not have total control over all matters involving foreign nationals as shown in the U.S. Supreme Court's decision in Terrace v. Thompson, supra. Moreover, Congress itself recognized its limitations in regulating state-chartered corporations. Consequently, the interpretation of the term "any political office" as found in section 441b should not be applied to section 441e.

b. The Foreign Agents Registration Act Does Not Evidence Congress's Intent to Ban Foreign Contribution in State and Local Elections.

The interpretation of "any political office" from Section 441b is also not applicable to Section 441e since the former was not the actual statutory predecessor to be latter. Instead, the definition of "foreign national" as used in Section 441e refers to the Foreign Agents Registration Act which contains nothing therein to evidence Congress's intent to specifically regulate foreign contributions in state or local elections.

2 U.S.C. §441d(b) provides:

As used in this section, the term "foreign national" means --

(1) a foreign principal, as such term is defined by section 1(b) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 (b)), except that the term "foreign national" shall not include any individual who is a citizen of the United States; or

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(2) an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined by section 101 (a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

The Foreign Agent Registration Act, 22 U.S.C. §611(b), defines "foreign principal" as including:

(1) a government of a foreign country and a foreign political party;

(2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and

(3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

Nothing in the Foreign Agents Registration Act evidences Congressional intent to specifically regulate state or local elections. Although the territorial application clause of the Act (22 U.S.C. §619) provides that it applies to the states, the true intent of this provision seems to be simply to designate the geographical areas where the Act will be applied, i.e., throughout the United States as well as within its foreign possessions and territories. The actual activities which the Act is designed to regulate, however, concern only those which affect foreign or domestic policies of the federal government, not the states.

When read as a whole, the Act's exclusive concern with federal activities is evident since it refers throughout to the policies, agencies, officials and employees of the federal government and is silent as to those of the states. For example, the definition of a foreign agent includes a person within the United States who represents the interests of a foreign principal "before any agency or official of the Government of the United States." 22 U.S.C. §611(c)(1)(iv) (emphasis added). The registration and filings required by the Act are to be made with the U.S.

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Attorney General. 22 U.S.C. §§612 and 614. A foreign agent must disclose that he is registered before distributing political propaganda or requests to any agency or official of the United States government. See section heading to 22 U.S.C. §614(e). A foreign agent appearing "before any committee of Congress" must also furnish the committee with a copy of his most recent foreign agent registration statement. 22 U.S.C. §614(f).

The Act exempts attorneys from its requirements when they are involved in "the legal representation of a disclosed foreign principal before any court of law or any agency of the Government of the United States". 22 U.S.C. §613(g). This is a significant change from an earlier draft of this exemption which included legal representation before the courts or administrative agencies "of any State or political subdivision thereof." See House Report No. 1470, 2 U.S. Cong. & Admin. News '66, 2397, 2408.

The statutory definition of the term "political activities" is limited to the dissemination of political propaganda and any other activity which is intended to "influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interest, policies, or relations of a government of a foreign country or a foreign political party." 22 U.S.C. §611(o) (emphasis added).

House Report No. 1470, supra, implicitly recognizes that the Act applies only to attempts to influence the federal government and not the states since it defines the word "agency" as used in the Act as referring to "every unit in the legislative and executive branches of the Government, including congressional committees." It further defines the word "official" to include "Members and officers of both Houses of Congress as well as officials in the executive branch." Id. at 2402 (emphasis added).

The House Report explains the intent of the Act as being "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." Id. at 2398. But the report expressly recognizes that the political activities meant to be regulated by the Act are limited those which have seek to influence:

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> (1) formulating, adopting, or changing the foreign or domestic policies of our Government, or
>
> (2) the political or public interests, policies or relations of a foreign government or a foreign political party.

Id. at 2402.

In defining the phrase "political or public interests, policies, or relations," the House Report states:

> It is the committee's understanding that the phrase refers to matters which on the domestic governmental level would be called a policy matter, in the international context may be called questions concerning a country's foreign relations, and in the context of party politics may be termed matters involving the national interest.

Id. at 2403.

From the statute and the House committee report, it is clear that the Foreign Agents Registration Act was intended to cover matters of national or international concern, rather than merely state or local issues. Because undue foreign influence over federal elected officials affect national or international policies, the Act may be used to evidence Congressional intent to prohibit foreign campaign contributions in federal elections.

But the same cannot be said of state or local elections. There is nothing in the Act or the accompanying Congressional committee reports which evidences an intent to regulate foreign agents' conduct before state governments if there is no impact upon national interests. Additionally, state and local elected officials do not set national or international policy, as those powers have been delegated to Congress and the Executive Branch. Therefore, the Foreign Agents Registration Act cannot be used to evidence Congressional intent to prohibit foreign campaign contributions in state or local elections.

Moreover, to use the Federal Agents Registration Act as the reason to limit the State's reserved power to regulate its own elections would be a travesty of the Constitution. The Foreign Agents Registration Act is involved only because the Federal Election Campaign Act has used it to define "foreign nationals." Neither of these

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acts specifically propose to regulate state or local elections with respect to foreign campaign contributions. In the absence of such specific statutory authority, much less any countervailing constitutional authority, the States' Tenth Amendment right to govern their own state and local elections should not be abrogated.

c. The Legislative History to the Voting Rights Act Provides the Clearest Guidance as to Congressional Intent to Avoid Federal Regulation of State and Local Elections.

Rather than looking to the Foreign Agents Registration Act to determine Congressional intent as to whether or not the FEC Act's prohibition against foreign contributions was meant to apply in state and local elections, the Commission should look at the federal Voting Rights Act of 1965. The Voting Rights Act not only predates and is similar in subject matter to the FEC Act, but has also been reviewed by the U.S. Supreme Court with respect to the constitutionality of several of its provisions in the Oregon case, supra.

The statutory language as well as the legislative history to the Voting Rights Act would provide clear guidance as to Congressional intent in interpreting the FEC Act. 42 U.S.C. §1973i(c) of the Voting Rights Act makes it unlawful to give false information for voter registration purposes and contains the following proviso limiting its jurisdiction to federal elections only:

> Provided, however, That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United State House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

Senator Williams, the original sponsor of the false registration provision (amendment no. 82), did not propose this proviso as it was his intent that the false registration provisions would apply to all states and in all elections. 111 Cong. Rec. 8424 (1965). However, concerns such as the following by Senator Hart were raised as to the constitutionality of federal restrictions in state and local elections:

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> Mr. President, [amendment no. 82] ... applies to State and local elections, as well as to the Federal elections. That question, whether Congress has the power to insure fair election procedures in State and local elections, unless they are related to insuring the guarantees under the 14th and 15th amendments, is a very open one and a very serious one. This is the second reason which persuades us to hope that the amendment will not be agreed to.

111 Cong. Rec. 8431 (1965).

To alleviate the concerns raised by Senator Hart, Senator Ervin proposed the proviso above and stated:

> I am in favor of amendment No. 82. However, in my opinion amendment No. 82 in its present form is unconstitutional because it is not restricted to Federal elections. By the term "Federal elections", I mean elections in which presidential electors and Members of the U.S. Senate and Members of the U.S. House of Representatives are chosen.
>
> The only effect of my amendment would be to confine the application of amendment No. 82 to Federal elections and thereby make it constitutional under the interpretation placed on the 15th amendment by the Supreme Court of the United States in a number of cases.

111 Cong. Rec. 8975 (1965).

Thus, the statutory language and legislative history of the Voting Rights Act makes it clear that Congress did not intend to abrogate the States' constitutional right to govern state and local elections.

Presumably, when Congress subsequently enacted the Federal Election Campaign Act in 1971, it was aware of the constitutional issues concerning States' rights in governing state and local elections since it had considered such issues in debating the Voting Rights Act of 1965 and a portion of the latter Act had been found by the Supreme Court to be an unconstitutional infringement of States' rights in the 1970 Oregon case. If it had been Congress's intent to apply the FEC Act's foreign contribution prohibition to state and local elections, it logically would have expressly stated so rather than impairing a constitutionally recognized right of the States by mere

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implication. Therefore, the fact that 2 U.S.C. §441e does not specifically apply to state and local elections should be viewed as Congressional intent to not affect the States' Tenth Amendment right to regulate its own elections.

4. The FEC's Regulations Prohibiting Foreign Contributions in State and Local Elections Exceeds its Statutory Authority and is Unconstitutional.

In light of the discussion above, the FEC's regulation at 11 CFR §110.4 goes beyond its statutory authority to promulgate rules to carry out the purposes of the federal Act. Section 307(8) (2 U.S.C. §437d). The relevant portion of 11 CFR §110.4 stated at the time of the complaint was brought:

> §110.4. Prohibited contributions.
>
> (a)(1) A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special or runoff election in connection with any local, state or Federal public office.

(Emphasis added).

Since the time the complaints in this case were filed, the Commission has amended §110.4 to make it clear that expenditures by foreign nationals are also prohibited.

Although the Commission could try to justify its far-reaching regulations on the basis that Section 319 prohibits foreign contributions in connection with "any political office," such an interpretation goes beyond the scope of the matter intended to be regulated by the Act itself and unconstitutionally preempts the States' sovereign right to regulate state and local elections.

Moreover, the Commission's regulation is inconsistent with its interpretations of other provisions of the Act. For example, Section 317 (2 U.S.C. §441c) makes it unlawful for federal contractors to make contributions "to any political party, committee, or candidate for public office or to any person for any political purpose use." While this statutory language is similar to if not broader than the provisions of Section 319, the Commission's

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regulations limit Section 317's application to only federal office and states that the "prohibition does not apply to contributions or expenditures in connection with State or local elections." FEC Regulations Section 115.2(a).

For the foregoing reasons, it is our contention that the scope of the Commission's regulations at 11 CFR §110.4 is impermissibly overbroad, and the prohibition against foreign contributions should not be applied to state and local elections.

5. Even if the FECA and Commission Regulations are Found to be Constitutional Restrictions on States' Tenth Amendment Rights, the Respondent Has Acted Within the Permissible Scope of Activity as Defined by Prior Rulings of the Commission.

Even if the Commission declines to narrow the scope of its regulations to apply to contributions only in federal elections, Mauna Lani's actions have fallen within the ambit of permissible activity under the FEC's prior advisory opinions.

In numerous advisory opinions, the Commission has permitted candidates for state or local elections to accept contributions from domestic corporations with their principal place of business in the United States, even if they were wholly or substantially owned by foreign nationals. See AO 1985-3 (CCH §5809); AO 1983-19 (CCH §5722); AO 1983-31 (CCH §5735); AO 1982-10 (CCH §5651); AO 1982-34 (CCH §5678); AO 1980-100 (CCH §5548); AO 1981-36 (CCH §5632); AO 1980-111 (CCH §5560); AO 1978-21 (CCH §5327). The Commission has consistently reasoned that a domestic company which is a discrete corporate entity with its principal place of business in the United States would not be considered a "foreign national" subject to the prohibition of 2 U.S.C. §441e. The Commission has cautioned, however, that the persons who will exercise decision-making authority on behalf of such domestic corporations must not be foreign nationals.

The Commission has also specifically permitted a PAC to be formed by a trade association which included foreign members. In AO 1980-111, the Commission found that the trade association would not be considered a foreign national because it was an American corporation with its principal place of business in the U.S. Consequently, the Association was able to establish a separate segregated fund

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which could make campaign contributions (apparently for federal elections) without violating the prohibitions of §441e, so long as no foreign nationals exercised decision-making authority with respect to PAC activities and made no contributions to the PAC.

In AO 1981-36, the Commission went even further in permitting a trade association incorporated and situated in California to establish a PAC and fund it with general membership dues from persons which included non-voting foreign nationals. So long as no foreign nationals served in decision making positions on the PAC or directed the decisions of the PAC, the Commission found that the PAC could make campaign contributions to state elections.

6. In Any Event, No further Action Should be Taken Due to the Mitigating Circumstances of this Case.

Nothing in existing Hawaii law prohibits contributions by foreign nationals in state and local elections. See Hawaii Revised Statutes Chapter 11.

Moreover, because of the belief that the Federal Election Campaign Act applied only to federal elections and did not apply to state or local elections, the Executive Director since 1976 of the Hawaii State Campaign Spending Commission has been advising persons for years that contributions by foreign nationals are permitted under state law and was under the belief that the federal prohibition of foreign contributions applied only to federal elections and not to state and local elections. See attached affidavit of Jack Gonzales. In fact, as Mr. Gonzales points out in his affidavit, he has even received information from the FEC's staff that the Federal Election Law applies only to federal elections, and not to state or local elections.

Since the time the complaint in this case was filed, Mauna Lani has made no further campaign contributions.

In light of these mitigating circumstances, there clearly has been no willful intent to violate federal law and no further action should be taken in this case.

APPLICATION OF LAW TO PRESENT CASE:

If the foreign contribution ban is found to be limited to federal campaigns, then the complaint against Mauna Lani should be dismissed since there was no contribution made to any federal campaign.

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Despite the foregoing arguments concerning the constitutional and jurisdictional issues, if the Commission continues to apply the foreign contribution ban to state and local elections, the complaint against Mauna Lani should be dismissed for the following reasons. First, neither Mauna Lani Resort, Inc. nor Mauna Lani Resort PAC should be considered foreign nationals. Mauna Lani Resort, Inc. is a discrete corporate entity organized under the laws of the State of Hawaii and has its principal place of business in the United States. Mauna Lani Resort PAC is established and fully funded by Mauna Lani Resort, Inc., and likewise, should not be considered a foreign national.

Second, all decisions regarding Mauna Lani's campaign contributions were made by the Executive Vice President and the Vice-President for Corporate Communications, both of whom are and always have been American citizens. Although the manual process of disbursing checks involves Japanese citizens, this is the same procedure that Mauna Lani uses for all of its other disbursements and is necessary to ensure proper accounting control. Other than this manual step, no foreign national were involved in making any campaign contribution decisions or has ever initiated, altered or rejected the American citizens' decisions to make campaign contributions. Thus, as required by the Commission's advisory opinions, no foreign national directs or controls any of Mauna Lani's decisions to make campaign contributions.

Third, there was no intent on the part of Mauna Lani to violate federal law. As required by State law, Mauna Lani has also reported its campaign contributions to the State Campaign Spending Commission. Moreover, in making campaign contributions, Mauna Lani was acting in accordance with the long-standing belief in the State of Hawaii and the Executive Director of the State Campaign Spending Commission that the federal prohibition against campaign contributions did not apply to state or local elections. Finally, as a result of the pending action, Mauna Lani has decided to not make any more campaign contributions until this matter is resolved. Clearly, therefore, there is and was no wilful intent on the part of Mauna Lani to violate the Federal Election Law.

CONCLUSION:

In light of the state and federal law and cases above and the long-standing belief in Hawaii that foreign

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contributions were permissible in state and local elections, Mauna Lani respectfully requests that the complaint against it be dismissed without further investigation on the basis that federal law does not preempt state control of this area.

Alternatively, Mauna Lani requests that the Commission find that it has not violated Section 441e of the Federal Election Campaign Act since Mauna Lani Resort, Inc. is not a foreign corporation, but is a discrete corporate entity organized under the laws of Hawaii and having its principal place of business in Hawaii, and no foreign national controlled or directed Mauna Lani's decisions to make campaign contributions to any state or local election.

If we can be of further assistance to you, please feel free to call the undersigned.

Sincerely,

Cheryl K. Kakazu

CHERYL K. KAKAZU
for
KOBAYASHI, WATANABE, SUGITA,
KAWASHIMA & GODA

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Enclosures

cc: Francine Duncan

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STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

AFFIDAVIT OF JACK GONZALES

JACK GONZALES, being first duly sworn upon oath deposes and says that:

1. He is and has been the Executive Director of the Hawaii State Campaign Spending Commission ("Commission") since 1976;

2. As Executive Director of the Commission, he is responsible for the administration and enforcement of the State Campaign Spending Law, §11-191, et. seq., Hawaii Revised Statutes.

3. The position of the State Campaign Spending Commission has always been that the federal election laws applied only to federal elections, and did not apply to state or local elections.

4. Until January, 1989, your affiant has advised the public in his capacity as the Executive Director of the State Campaign Spending Commission it was the Commission's position that the federal election laws did not apply to state or local elections, and that Hawaii state law did not prohibit contributions by foreign nationals in state or local elections.

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5. Following local news reports in January, 1989 which questioned whether the federal election laws applied in state and local elections, your affiant made an anonymous inquiry to the Federal Election Commission and was told by an unknown staffperson that the Federal Election Law does not apply to state or local elections.

6. Hawaii law does not prohibit foreign contributions in state or local elections.

7. Hawaii law permits corporate contributions in state or local elections.

Further affiant sayeth naught.

Dated: Honolulu, Hawaii, this 23rd day of June, 1989.

JACK GONZALES

Subscribed and sworn to before me this 23rd day of June, 1989.

Notary Public
First Judicial Circuit
State of Hawaii

My commission expires: 8/2/1989

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of) MUR 2892)

ANSWERS TO INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS

1. State your name, local address, business, and where you are incorporated.

ANSWER:

Mauna Lani Resort, Inc
P. O. Box 4959
Kohala Coast, Island of Hawaii 96743-4959

Mauna Lani Resort, Inc. is incorporated in the State of Hawaii. It is in the resort development and operation business.

2. Identify all officers and directors.

ANSWER:

List of Officers:

Kenneth F. Brown Chairman of the Board Mauna Lani Resort, Inc.	220 S. King Street Suite 1212 Honolulu, HI 96813 (808) 537-3941 3715 Diamond Head Road Honolulu, HI 96816 (808) 734-8694	U.S. Citizen
Makoto Yuki President Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6677 73-442 Paiaha Street Kailua-Kona, HI 96740 (808) 325-7882	Japanese National E-2 VISA

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Katsuhisa Suzuki Sr. Vice President/ Treasurer Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6677	Japanese National E-2 VISA
	P.O. Box 2494 Kamuela, HI 96743 (808) 885-5053	
Francine K. Duncan Vice President - Corporate Communications Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6677	U.S. Citizen
	P.O. Box 2045 Kamuela, HI 96743 (808) 885-8043	
Kentaro Yuno Vice President/Corp. Secretary Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6677	Japanese National E-2 VISA
	73-4477 Holo Holo Street Kailua-Kona, HI 96740 (808) 325-7688	
Shigeru Yanagimachi Vice President Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6677	Japanese National E-2 VISA
	73-1289 Awakea Street Kailua-Kona, HI 96740 (808) 325-1014	
Thomas H. Yamamoto Executive Vice President Mauna Lani Resort, Inc. Employed: 4/1/79 - 9/15/89	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6677	U.S. Citizen
Currently employed at: Chief Officer of Operations NANSAY HAWAII, Inc. Employed: 9/89 - present	P.O. Box 111222 Suite 727 Kamuela, HI 96743 (808) 885-5300	
	P.O. Box 1359 Kamuela, HI 96743 (808) 885-7729	

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List of Directors:

Kenneth F. Brown **Chairman of the Board** **Mauna Lani Resort, Inc.**	**220 S. King Street** **Suite 1212** **Honolulu, HI 96813** **(808) 537-3941** 3715 Diamond Head Road Honolulu, HI 96816 (808) 734-8694	**U.S. Citizen**
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Bunichiro Tanabe **Advisor** **Mitsubishi Corporation**	**2-6-3, Marunouchi** **Chiyoda-ku, Tokyo, Japan** (03) 210-2121 7-10 Tokiwa-cho, Chigasaki-City Kanagawa-ken, Japan 253 (0467) 82-8201	**Japanese** **National**

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Yuhei Yagi Chairman of the Board Tokyu Construction Co., Ltd.	16-14, Shibuya 1-chome Shibuya-ku, Tokyo 150 Japan (03) 406-5111 Arusu Seta #2-501 2-31 Seta Setagaya-ku, Tokyo 158 Japan (03) 707-1114	Japanese National
Ihaho Takahashi **Chairman of the Board** **Tokyu Car Corporation**	**1 Kamariya-cho** **Kanazawa-ku, Yokohama-shi** **Kanagawa 236, Japan** **(045) 701-5155** **3-880-15 Otsubo Zushi-City** **Kanagawa-ken, Japan 249** **(0468) 73-6466**	**Japanese** **National**
Tsuneo Morigaki **Advisor** **Tokyu Tourist Corporation**	**8-1, Higashiyama 3-chome** **Meguro-ku, Tokyo 153** **Japan** **(03) 5704-3750** **2-19-4 Eda Kita** **Midori-ku, Yokohama** **Kanagawa 227** **Japan** **(045) 911-6302**	**Japanese** **National**
Yoshitada Fujimaki **President** **Shiroki Corporation**	**2 Kirihara-cho** **Fujisawa-shi, Kanagawa 252** **Japan** **(0466) 44-8571** **4-92-15 Shimobayashi-cho** **Toyoda-shi, Japan 471** **(0565) 33-8692**	**Japanese** **National**

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Tetsuro Aki **President** **Tokyu Land Corporation**	**21-2, Dogenzaka 1-chome** **Shibuya-ku, Tokyo 150** **Japan** **(03) 463-6611** **3-24-5 Kamimeguro, Meguro-ku** **Tokyo 153, Japan** **(03) 712-5680**	**Japanese** **National**
Yozo Inagaki Deputy Executive General Manager of Overseas Division Tokyu Corporation	26-20 Sakuragaoka-cho Shibuya-ku, Tokyo 150 Japan (03) 477-6530 2-9-17 Kaminoge, Setagaya-ku Tokyo, Japan 158 (03) 703)2691	Japanese National
Hideo Noguchi Managing Director Mitsubishi Corporation	6-3, Marunouchi 2-chome Chiyoda-ku, Tokyo 100-86 Japan (03) 210-2121 7-22 Nishikomatsugawa-cho, Edogawa-ku Tokyo, Japan 132 (03) 651-5448	Japanese National
Mitsugi Nakajima **President** **Tokyu Hotel Chain Co., Ltd.**	**6-6 Koji-machi** **Chiyoda-ku, Tokyo 102** **Japan** **(03) 264-0111** **478-8 Eda-cho, Midori-ku** **Yokohama, Japan 227** **(045) 912-2861**	**Japanese** **National**

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3. Identify all management personnel.

ANSWER:

Management Personnel:

Marcia Stevens Dir. of Planning/Design Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6677 P.O. Box 390012 Kailua-Kona, HI 96745 (808) 326-6098	U.S. Citizen
Neil O'Keeffe Construction Manager Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6677 P.O. Box 3274 Waikoloa, HI 96743 (808) 883-9173	U.S. Citizen
Norman Ah Hee Resort Maintenance Supervisor Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6677 P.O. Box 76 Laupahoehoe, HI 96764 (808) 962-6306	U.S. Citizen
Jerry Johnston Director of Golf Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6655 68-1805 Pu'unui Waikoloa, HI 96743 (808) 883-8554	U.S. Citizen
Len Tomosada Asst. Mgr. Golf Operations Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6655 P.O. Box 883 (WVS) Kamuela, HI 96743 (808) 885-5736	U.S. Citizen
Lani Collins Merchandise Manager Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6655 P.O. Box 3309 (WVS) Kamuela, HI 96743 (808) 883-9172	U.S. Citizen

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Rodney Miles Teaching Professional Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6655 68-1934 Lina-Poepoe Waikoloa, HI 96743 (808) 883-8388	U.S. Citizen
Georges Dubuisson Director of Food & Beverage Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6677 27 Pohakala Place Waikoloa, HI 96743 (808) 883-9369	U.S. Citizen
Neil Bustamante Golf Course Superintendent Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6300 P.O. Box 2616 Kamuela, HI 96743 (808) 885-4434	U.S. Citizen
George Carvalho Asst. Golf Course Superintendent Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6300 P.O. Box 2275 Kamuela, HI 96743 (808) 885-6111	U.S. Citizen
Irwin Mock Asst. Golf Course Superintendent Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6300 P.O. Box 925 Honokaa, HI 96727 (808) 775-0681	U.S. Citizen
Ricardo Corpuz Controller Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6677 P.O. Box 2091 Kamuela, HI 96743 (808) 885-4025	U.S. Citizen

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Marty Shimizu Asst. Controller Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6677 1286 Puhau Street Hilo, HI 96720 (808) 959-3867	U.S. Citizen
William Spitz, III Heavy Construction Coordinator Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6677 P.O. Drawer AW Kailua-Kona, HI 96740 (808) 325-7271	U.S. Citizen
Leilani Hino Dir. of Community Affairs Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6677 85 Puako Beach Drive Kamuela, HI 96743 (808) 882-7024	U.S. Citizen
Robert Haas Knickers Restaurant Manager Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6699 P.O. Box 4403 Kailua-Kona, HI 96745 (808) 325-7364	U.S. Citizen
Saguesag Mullen Knickers-Asst. Manager Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6699 P.O. Box 1027 Hawi, HI 96719 (808) 889-5907	U.S. Citizen
Carol Silva Gallery Restaurant Manager Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-7777 P.O. Box 4317 Kawaihae, HI 96743 (808) 882-7996	U.S. Citizen

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Kyle Nishimura Restaurant Relief Manager Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6699 P.O. Box 3111 (WVS) Kamuela, HI 96743 (808) 883-9126	U.S. Citizen
Harriet Ann Kraan Executive Sous Chef Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6699 P.O. Box 1292 Kapaau, HI 96755 (808) 889-5755	U.S. Citizen
Ann Sutherland Executive Chef Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-7617 P.O. Box 1813 Kamuela, HI 96743 (808) 885-5046	U.S. Citizen
Guy LaGuire Racquet Club Manager Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-7765 P.O. Box 3422, WVS Kamuela, HI 96743 (808) 883-9148	U.S. Citizen
Lee Carpenter STP Operations Manager Mauna Lani Resort, Inc.	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6866 P.O. Box 3388 (WVS) Kamuela, HI 96743 (808) 883-8026	U.S. Citizen
Eugene Mullen Chief of Security	P.O. Box 4959 Kohala Coast, HI 96743 (808) 885-6556 P.O. Box 538 Hawi, HI 96719 (808) 889-5907	U.S. Citizen

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4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

ANSWER:

Mauna Lani Resort, Inc. is a subsidiary of the Tokyu Group. Entities with ownership rights (stockholders) are as follows:

Tokyo Corporation	26-20 Sakuragaoka-cho Shibuya-ku, Tokyo 150 Japan (03) 477-6530	Japanese Corp. 49.4%
Mitsubishi Corporation	6-3, Marunouchi 2-chome Chiyoda-ku, Tokyo 100-86 Japan (03) 210-2121	Japanese Corp. 11.4%
Tokyu Construction Co., Ltd.	16-14, Shibuya 1-chome Shibuya-ku, Tokyo 150 Japan (03) 406-5111	Japanese Corp. 09.8%
Tokyu Land Corporation	21-2, Dogenzaka 1-chome Shibuya-ku, Tokyo 150 Japan (03) 463-6611	Japanese Corp. 06.4%
Tokyu Resort Corporation	1-1, Kyobashi 1-chome Chuo-ku, Tokyo 104 Japan (03) 273-2411	Japanese Corp. 06.4%
Tokyu Dept. Store Co., Ltd.	24-1, Dogenzaka 2-chome Shibuya-ku, Tokyo 150 Japan (03) 477-3111	Japanese Corp. 05.9%
Tokyu Hotel Chain Co., Ltd.	6-6 Koji-machi Chiyoda-ku, Tokyo 102 Japan (03) 264-0111	Japanese Corp. 03.9%
Tokyu Tourist Corporation	8-1, Higashiyama 3-chome Meguro-ku, Tokyo 153 Japan (03) 5704-3750	Japanese Corp. 02.0%

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Tokyu Car Corporation	1 Kamariya-cho Kanazawa-ku, Yokohama-shi Kanagawa 236, Japan (045) 701-5155	Japanese Corp. 02.0%
Shiroki Corporation	2 Kirihara-cho Fujisawa-shi, Kanagawa 252 Japan (0466) 44-8571	Japanese Corp. 02.0%
Noboru Gotoh (deceased)	8-27, Kaminoge 3-chome Setagaya-ku, Tokyo 158 (03) 703-1001	Japanese National 00.4%
Emerald Management Co.	4 Waterfront Plaza Suite 480 500 Ala Moana Blvd. Honolulu, HI 96813 (808) 536-8787	U.S. Corp. 00.4%

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

ANSWER:

Campaign contributions aggregating over $1,000 must be reported to the Hawaii State Campaign Spending Commission. See attached for all contributions made by Mauna Lani Resort PAC from January 1, 1986 to present.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

ANSWER:

Francine K. Duncan, Vice President - Corporate Communications, and Thomas Yamamoto, Executive Vice President until September 15, 1989. See Answer No. 2 for addresses and telephone numbers.

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7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

ANSWER:

The source of funds was the Mauna Lani Resort PAC. The funds for the PAC are provided directly by Mauna Lani Resort, Inc., a Hawaii corporation.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

ANSWER:

Yes, we maintain a political action committee which made contributions in state and local elections. Source of funds is Mauna Lani Resort, Inc. All decisions on contributions, i.e. to whom and how much, are made by Francine Duncan and until September, 1989, by Thomas Yamamoto as well.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for pool.

ANSWER:

N/A.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

ANSWER:

All questions were answered by Francine Duncan, who has been with Mauna Lani Resort since July, 1980, as Director of Public Affairs, Assistant Vice President - Marketing and Communications, and is currently Vice President - Corporate Communications.

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CAMPAIGN CONTRIBUTIONS
by
MAUNA LANI RESORT PAC

January 1, 1986 to July 1, 1990

DATE	RECIPIENT'S NAME	AMOUNT
07/15/86	Andy Anderson for Governor	$ 100.00
07/31/86	Friends of Sandy Pechter Schutte	$ 250.00
07/15/86	Citizens for Heftel for Governor	$ 100.00
07/31/86	Andy Anderson for Governor Committee	$ 300.00
08/11/86	Val Hanohano	$ 100.00
08/11/86	Val Hanohano	$ 25.00
08/29/86	Friends of Peter Young	$ 100.00
09/30/86	Friends of Mike O'Kieffe in '86	$ 150.00
10/15/86	Democratic Party of Hawaii	$ 450.00
10/15/86	Citizens for Waihee	$1,000.00
10/17/86	Cayetano for Lt. Governor	$ 250.00
10/15/86	Andy Anderson for Governor Committee	$1,000.00
11/06/86	Friends of Peter Young	$ 500.00
11/06/86	Friends of Dante Carpenter	$ 100.00
02/20/87	Citizens for Waihee	$1,000.00
03/10/87	Friends of Ariyoshi	$ 75.00
04/10/87	Friends of Harvey Tajiri	$ 100.00
04/10/87	Friends of Jim Dahlberg	$ 100.00
04/20/87	Friends of Wayne Metcalf	$ 50.00
05/05/87	Senator Malama Solomon	$ 250.00
06/08/87	Friends of Tom Okamura	$ 250.00
07/31/87	Hawaii County Democratic Party	$ 250.00
09/21/87	Friends of Takashi Domingo	$ 250.00
09/30/87	Friends of Mike O'Kieffe	$ 75.00
09/30/87	Friends of Wayne Metcalf	$ 50.00
10/20/87	Friends of Mike O'Kieffe	$ 75.00
11/20/87	Friends of Dante Carpenter	$ 250.00
12/08/87	Friends of Dante Carpenter	$ 625.00
01/20/88	Friends of Ben Cayetano	$ 500.00
02/11/88	Friends of Senator Dick Matsuura	$ 50.00
02/19/88	Friends of Romy Cachola	$ 125.00
03/21/88	Friends of Dwight Takamine	$ 250.00
03/31/88	Committee to Elect Stephen K. Yamashiro	$2,000.00
03/31/88	Friends of Bob Herkes	$ 50.00
04/20/88	Friends of James Aki	$1,000.00
04/20/88	Friends of Eddie Akana	$ 150.00
04/29/88	Friends of Merle K. Lai	$ 125.00
04/29/88	Friends of Milton Holt	$ 60.00
05/13/88	Citizens for Waihee	$ 500.00
05/30/88	Andy Levin - in-kind contribution	$ 262.64
06/20/88	Friends of Senator Dick Matsuura	$ 500.00
06/30/88	Friends of Kalani Schutte	$2,000.00
07/15/88	Friends of Jim Dahlberg	$ 500.00

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08/15/88	Friends of Dwight Takamine	$ 50.00
09/11/88	Andy Levin - in-kind contribution	$ 295.46
09/27/88	Friends of Andy Levin	$ 150.00
09/30/88	Friends of Andy Levin	$ 100.00
10/10/88	Friends of Mike O'Kieffe	$ 300.00
10/24/88	State Democratic Party	$1,000.00
10/24/88	Friends of Dante Carpenter	$2,000.00
10/24/88	Friends of Lorraine Jitchaku-Inouye	$2,000.00
10/24/88	Friends of Ann Kobayashi	$ 250.00
10/24/88	Friends of Takashi Domingo	$2,000.00
11/07/88	Marilyn for Mayor Committee	$ 150.00
11/07/88	Sherwood Greenwell for Council Committee	$ 200.00
11/07/88	Friends of Harry Ruddle	$ 200.00
11/07/88	Friends of Russell Kokubon	$ 200.00
11/07/88	People for Helene Hale	$ 100.00
11/08/88	Senator Robert N. Herkes	$ 500.00
02/15/89	Friends of Senator Dick Matsuura	$ 50.00
		$25,443.10

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STATE OF HAWAII)
) SS:
COUNTY OF HAWAII)

Francine Duncan, being first duly sworn upon oath, deposes and says that she has read the foregoing answers to the interrogatories and the same are true to the best of her information, knowledge and belief.

Francine Duncan
FRANCINE DUNCAN

Subscribed and sworn to before me
this 6th day of July, 1990.

Richard H Cogus
Notary Public, State of Hawaii

My commission expires: 10-26-93

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Mauna Lani Resort, Inc.'s letter to the Federal Election Commission, Answers to Interrogatories, and Affidavit of Jack Gonzales was mailed by express delivery service on this date to the following at her last known address:

FEDERAL ELECTION COMMISSION
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Attn: Patty Reilly

DATED: Honolulu, Hawaii, JUL 0 9 1990.

Cheryl K. Kakazu

CHERYL K. KAKAZU #2959-0
Attorney for
MAUNA LANI RESORT, INC.

Of Counsel:
KOBAYASHI, WATANABE, SUGITA,
KAWASHIMA & GODA

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OGC 6935

GRAHAM & JAMES
ONE MARITIME PLAZA
THIRD FLOOR
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE (415) 954-0200

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AFFILIATED OFFICE
KUWAIT

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M. C. I. 67588 GJ SFO

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(415) 391-5906

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CHALGRAY, SAN FRANCISCO, CA

WRITER'S DIRECT DIAL NUMBER
(415) 954-0220

July 12, 1990

HAND DELIVERED

90 JUL 13 AM 10:27

By Federal Express

Office of the General Counsel
Federal Election Commission
999 E Street, N.W., Room 659
Washington, D.C. 20463

Attn: Michael Troy, Esq.

Re: MUR 2892
American Hawaii Cruises
Our File: AHC-1.1

Gentlemen:

On behalf of American Global Line Inc., a Delaware corporation ("AGL"), American Hawaii Cruises, Inc., a Delaware corporation ("AHCI"), and American Hawaii Cruises, a joint venture formed under the laws of Hawaii ("AHC"), enclosed is an Affidavit of Arthur P. Herman demonstrating that AGL, AHC and AHCI did not violate 2 U.S.C. 441e because those entities, at all times relevant herein, were not "foreign nationals" or "foreign principals" as defined in 2 U.S.C. 441e, 11 C.F.R. 110.4 and 22 U.S.C. 611(b) and were United States citizens within the meaning of 46 U.S.C. 802, 46 C.F.R. 67.03 et seq. and 46 C.F.R. 355.1 et seq. Discovery responses to FEC's interrogatories and request for production of document attached to the FEC's May 21, 1990 are also enclosed. Based on the documents submitted herewith and other documents previously submitted in this proceeding, AGL, AHC and AHCI request that the FEC take no action against them.

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

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We request that the information and documents submitted by AGL, AHC and AHCI in this matter not be disclosed to the public.

Thank you for your consideration.

Very truly yours,

Sam D. Delich/pl

Sam D. Delich
of
GRAHAM & JAMES

FL/SDD/lch
encl.

cc: Arthur P. Herman

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Re: MUR 2892
American Hawaii Cruises

RESPONSES TO INTERROGATORIES

1. State your name, local address, business, and where you are incorporated.

Response:

(a) American Hawaii Cruises ("AHC"), a joint venture organized under the laws of Hawaii and comprised of American Global Line Inc. ("AGL") and American Hawaii Cruises, Inc. ("AHCI"), operates the two U.S. flag cruise vessels (SS INDEPENDENCE and SS CONSTITUTION) owned by AGL. Its principal place of business is located at 604 Fort Street, Honolulu, Hawaii, 96813.

(b) AGL, a corporation organized under the laws of Delaware, is the owner of the two U.S. flag cruise vessels (SS INDEPENDENCE and SS CONSTITUTION) operated by AHC. Its principal place of business is located at 550 Kearny Street, San Francisco, California 94108.

(c) AHCI, a corporation organized under the laws of Delaware, is a wholly owned operating company of AGL. Its principal place of business is located at 550 Kearny Street, San Francisco, California 94108.

2. Identify all officers and directors.

Response:

(a) AHC's agent for service of process is Graham & James, Attn: Sam D. Delich, One Maritime Plaza, Suite 300, San Francisco, California 94111.

(b) AGL's agent for service of process is Graham & James, Attn: Sam D. Delich, One Maritime Plaza, Suite 300, San Francisco, California, 94111. With respect to the identity of all officers and directors of AGL, see attached Exhibit A.

(c) AHCI's agent for service of process is Graham & James, Attn: Sam D. Delich, One Maritime Plaza, Suite 300, San Francisco, California, 94111. With respect to the identity of all officers and directors of AHCI, see attached Exhibit B.

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3. Identify all management personnel.

Response: The officers of AGL and AHCI are also the management personnel of each of those entities. Those individuals are identified in response to Interrogatory No. 2.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

Response: AHCI is 100% owned by AGL. AGL is managed by the same officers as AHCI. AGL is not a "subsidiary" of any entity in that no corporate shareholder of AGL owns more than 45% of AGL's stock.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

Response: See attached Exhibit C for a list of all contributions from January 1, 1986 to the present.

A refund of $2,000 was received from the Friends of Senator Dickie Wong in June of 1987. A refund of $500 was received from Danny Kihano Campaign Committee on August 30, 1988. A refund of $250 was received from Dickie Wong in May 1990.

AHC filed Disclosure Reports with the Hawaii Campaign Spending Commission until it was advised in August 1988, that it was not necessary to complete the Disclosure Report forms and that a list of contributions attached to a cover letter was sufficient.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

Response: From before 1986 until his resignation in February of 1988, T.K. Yip, 1555 Hoaaina Street, Honolulu, Hawaii, 96821, (808)377-5567, United States citizen, was authorized by the Board of Directors of AGL and AHCI to make contributions on their behalf and for AHC. After February 1988 and continuing to the date hereof, the Board of Directors of AGL and AHCI authorized Peter Bianchi to make contributions on their behalf and for AHC.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

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Response: The general operating funds of AHCI derived from operating two U.S. flag cruise vessels around the Hawaiian islands were used to make the contributions noted in response to Interrogatory No. 5. Such funds were not provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of funds used by such committee. Identify all persons associated with the operation of such political action committee.

Response: AHCI does not have a political action committee per se. The political contribution activities were delegated to T.K. Yip; and after his resignation in February of 1988, those activities were delegated to Peter Bianchi.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

Response: AHCI does not maintain a separate pool of funds per se. It does have a specific yearly budget within the overall yearly budget approved annually by the Board of Directors of AHCI and AGL.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

Response: Arthur P. Herman, employed eight years with AHCI, was the Assistant Supervisor of American Hawaii Tours from May 1982 to July 1986, has been since April 1988 and is presently the Secretary of AHCI and AGL, and has been since July 1986 and is presently the Staff Counsel of AHCI and AGL.

RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS

The Commission requests the following documents: all election reports required to be filed with any government agency.

Response: Organizational Reports dated August 29, 1986 and July 30, 1987, Disclosure Reports dated July 30, 1986, September 8, 1986, October 10, 1986, October 20, 1986, December 4, 1986, July 30, 1987, letter reports dated August 17, 1988, October 14, 1988, July 26, 1989 and January 12, 1990, and a Report for Expenditures, Contributions and Subject Areas dated December 23, 1988, consisting of 31 pages, are attached as Exhibit D. AHCI has not yet filed any reports for 1990. After

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due diligence, respondent has not been able to locate any other election reports. Investigation and discovery are continuing; upon discovery of additional reports, respondent will provide copies of such documents to the Commission.

Dated: July 12, 1990

Arthur P. Herman
Secretary and Staff Counsel
AMERICAN GLOBAL LINE INC.
and AMERICAN HAWAII CRUISES, INC.

VERIFICATION

I, ARTHUR P. HERMAN, am the Secretary and Staff Counsel of American Global Line Inc. and American Hawaii Cruises, Inc., and am authorized to make this verification.

I have read the foregoing Responses to Interrogatories and Responses to Request for Production of Documents and know the contents thereof, which is true of my knowledge, except as to those matters which are alleged on information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this verification was executed on July 12, 1990.

Arthur P. Herman
Secretary and Staff Counsel
AMERICAN GLOBAL LINE INC.
and AMERICAN HAWAII CRUISES, INC.

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HAWAII SEKITEI
CORPORATION

320 LEWERS STREET • HONOLULU, HAWAII 96815 • (808) 924-2411

July 2, 1990

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

RE: Replies to your Interrogatories and Requests for Production of Documents.

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1. Hawaii Sekitei Corporation is doing business as the Waikiki Joy Hotel. The address is 320 Lewers Street Honolulu, Hawaii 96815. Hawaii Sekitei Corporation is incorporated in the State of Hawaii.

2. President- Genichi Sugiyama
   Vice President- Yoshimitsu Sugiyama
   Secretary- Hiroyuki Yanagimoto

3. Management personnel is the same as those identified in number 2.

4. Hawaii Sekitei Corporation is the subsidiary of K.K. Shingen Kanko, which is wholly owned by Genichi Sugiyama.

5. None. Hawaii Sekitei Corporaion has never made contributions to any federal, state and local elections prior to the luncheon tickets. (note: letter sent regarding this dated June 26, 1989)

6. Not applicable.

7. Not applicable.

8. No, Hawaii Sekitei Corporation does not maintain a political action committee.

9. No, Hawaii Sekitei Corporation does not maintain a pool of funds specified for election activity.

10. Yoshimitsu Sugiyama has been the Vice President for Hawaii Sekitei Corporation for 2 years.

Y. Sugiyama

Yoshimitsu Sugiyama
Vice President, Hawaii Sekitei Corporation

YS/kt

OGC 6964

BAYS
DEAVER
HIATT
KAWACHIKA
LEZAK
KODANI
Attorneys at Law

RECEIVED
FEDERAL ELECTION COMMISSION
90 JUL 16 AM 10:51

Floor • Hawaii Tower
Amfac Center • 745 Fort Street
Honolulu, Hawaii 96813

P.O. Box 1760
Honolulu, Hawaii 96806

Telephone (808) 545-5888
Facsimile (808) 533-4184
(808) 537-1889
Telex RCA 7238976

A. Bernard Bays*
Phillip L. Deaver
Jerry M. Hiatt
James A. Kawachika
John F. Lezak*
Roy M. Kodani
Harvey J. Tung
Crystal K. Rose
Craig K. Shikuma
William C. Burns
Carl H. Osaki
Jason N. Baba
Michael L. Lam
Alan K. Lau
Michael D. Rudy
Joseph S. Kwong
*Law Corporation

July 11, 1990

VIA FACSIMILE - (202) 376-3280

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

RECEIVED
FEDERAL ELECTION COMMISSION
90 JUL 17 PM 3:27

Re: MUR 2892 Hawaii Sekitei Corporation

Dear Mr. Troy:

Transmitted herewith is a copy of Hawaii Sekitei Corporation's ("HSC") reply to interrogatories regarding the alleged Federal Election Campaign Contribution violation. HSC did not, however, have any of the documents requested.

As you can see, consistent with Mr. Sugiyama's June 26, 1989 letter in this matter, HSC's alleged violation, if any, is minimal. Furthermore, under the circumstances, any penalty which may be forthcoming, should be mitigated considering the honesty and good standing of HSC in the United States.

Hopefully, after consideration of this matter, no further action will be taken. In the meantime, if you have any questions or comments in regard to this matter, please do not hesitate to contact me. Thank you for your cooperation and patience.

Very truly yours,

Michael L. Lam

Michael L. Lam

MLL:sab
cc: Yoshimitsu Sugiyama (w/enc.)
1715/90-0477

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00C 6958

FOLEY MAEHARA JUDGE NIP & CHANG

ATTORNEYS AT LAW
2700 GROSVENOR CENTER
737 BISHOP STREET
HONOLULU, HAWAII 96813

TELEPHONE: (808) 526-3011
FAX: (808) 523-1171

EDWARD R. BROOKS
WESLEY Y. S. CHANG
THOMAS M. FOLEY
JAMES R. JUDGE
ERIC T. MAEHARA
RENTON L. K. NIP
CARL TOM

PAULA W. CHONG
MIMI K. HORIUCHI
ELIZABETH A. IVEY
LENORE HU LEE
STELLA M. LEE
PETER J. LENHART
LEANNE A. N. NIKAIDO
CORI CHING WESTON

MAUI OFFICE
P. O. BOX 1288
WAILUKU, MAUI, HAWAII 96793

TELEPHONE: (808) 242-4955
FAX: (808) 242-4368

OF COUNSEL:
GEORGE T. OKAMURA

July 11, 1990

HAND DELIVERED

90 JUL 13 PM 11:32

Lee Ann Elliott, Chairman
Lawrence M. Noble, General Counsel
Michael Troy, Staff Member
Federal Election Commission
Washington D.C. 20463

RE: MUR 2846 Citizens for Waihee

Dear Messrs. and Mesdames:

Thank you for your letter dated June 27, 1990, extending our response date to the close of business on July 13, 1990.

Pursuant to 11 C.F.R. Section 111.18(d), Citizens for Waihee (hereinafter, the "Committee") would like to pursue pre-probable cause conciliation.

As Committee Chairman William Paty is presently traveling on the mainland, we will transmit the Statement of Designation of Counsel authorizing the undersigned to receive information and to act on behalf of the Citizens for Waihee before the Federal Election Commission (FEC) upon his return to the State.

90 JUL 17 PM 3:27

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

We have reviewed the Factual and Legal Analysis in MUR: 2892, and notwithstanding such analysis, believe, based upon the applicable facts and law, that no action should be taken against Citizens for Waihee for the alleged violation of 2 U.S.C. Section 441E for the following reasons:

A. THE COMMITTEE, IN GOOD FAITH AND WITH SUBSTANTIVE BASIS, HAS BEEN OF THE UNDERSTANDING THAT CONTRIBUTIONS BY FOREIGN NATIONALS ARE NOT PROHIBITED IN STATE ELECTIONS

1. The Federal Election Campaign Act, on its face and with its nomenclature, does not appear to apply to State Elections.

Chapter 14 of Title 2 of the United States Code is entitled "Federal Election Campaigns". The subchapter entitled "Disclosure of Federal Campaign Funds" is the chapter in which

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the applicable provision U.S.C. §1441e appears. Such provision provides, in relevant part, that it shall be unlawful for any foreign national directly or through any other person to make any contribution of money or other thing of value in connection with an election to any political office in connection with any primary convention or caucus to be held to select candidates for any political office. In the context of such provision, "contribution" is a specifically defined term. In 2 U.S.C.A. §431, the "Definitions" provision of the Act, "contribution" is defined in subparagraph (8)(A) as

> "Any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office" (Emphasis supplied).

Accordingly, the Committee had substantive basis, in the absence of countervening information or authority disseminated in the State of Hawaii, to understand that neither the Federal Election Campaign Act nor any contribution prohibitions contained therein were applicable in a non-Federal Election.

2. Hawaii law, on its face and as applied, does not prohibit contributions from foreign nationals.

As noted in Footnote 1. in the FEC's Factual and Legal Analysis, under Hawaii state law, there is no prohibition of campaign contributions from foreign nationals or for that matter, corporations owned or controlled by foreign nationals. The applicable chapter of the Hawaii Revised Statutes, Chapter 11 "Elections", contains no prohibition of contributions to candidates or their committees for elective office from foreign nationals or foreign corporations. The position of the State Campaign Spending Commission, which has jurisdiction over and oversight responsibilities with respect to the State Campaign Spending Law, Section 191, et. seq., has taken the view that federal election laws apply only to federal elections and do not apply to state or local elections and further that contributions from foreign nationals and foreign corporations are permissible.

The Committee, in the past, has sought the advice and direction of Jack Gonzales, the Executive Director of the Hawaii State Campaign Spending Commission and the consistent direction has that Hawaii State law does not prohibit contributions by foreign nationals or foreign corporations in state or local elections.

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B. THE COMMITTEE, WHILE NOT NECESSARILY IN AGREEMENT WITH THE FEC'S FACTUAL AND LEGAL ANALYSIS AND WITHOUT ADMISSION OF ANY LIABILITY AND WRONGDOING, WILL VOLUNTARILY COMPLY WITH AN FEC DIRECTIVE THAT CONTRIBUTIONS FROM FOREIGN NATIONALS BE REFUNDED AND THAT FUTURE CONTRIBUTIONS FROM FOREIGN NATIONALS BE RETURNED

The Committee, while not necessarily in agreement with the FEC's position that the Act is applicable to State elections, has adopted the policy that it will neither solicit nor accept contributions from foreign nationals nor from corporations known to be owned and directed by foreign nationals.

The Committee, in 1989, refunded contributions to foreign nationals known to it, and will be refunding contributions to corporations which it can identify as being owned and controlled by foreign nationals.

Subsequent to the receipt of a copy of the Complaint which was transmitted by the FEC to Citizens for Waihee which had been filed by Anthony P. Locricchio for himself and as attorney for various individuals dated February 2, 1989, Citizens for Waihee attempted to identify the contributions set forth in the Complaint and has refunded the contributions of those individuals that it has been able to identify as coming from a foreign national. The Locricchio complaint specifically refers to contributions received from four individuals, Masanori Kobayashi, Noshinori ("Ken") Hayashida, Hiroshi Kobayashi, and Yasuo Yasuda, aka Han Kuk Chun. The Committee's records indicate that Citizens for Waihee received a contribution of $1,000 from a "Ken Hayashida" on April 3, 1987, a contribution of $2000 from Hiroshi Kobayashi on November 3, 1986, a contribution of $2,000 from Masanori Kobayashi on November 3, 1986, and a contribution of $1,000 from Yasuo Yasuda on April 3, 1987. The contributions by Messrs. Hayashida and Yasuda were returned in 1989. The contributions of Hiroshi and Masanori Kobayashi have not been returned as it is the Committee's understanding that Masanori and Hiroshi Kobayashi attended public high schools in the State of Hawaii and are either naturalized citizens or permanent residents of the United States. In the event the FEC has information which would indicate different statuses of Messrs. Hiroshi and Masanori Kobayashi, the Committee will immediately refund the contributions of such individuals.

With respect to the individuals and entities identified in the Locricchio complaint dated March 29, 1989, the Committee will be refunding contributions to those individuals which can be identified as being foreign nationals and to corporations which it can identify as being owned and controlled by foreign nationals.

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We will note that it is extremely difficult for the Committee receiving contributions from Hawaii Corporations to ascertain whether such Corporations are owned wholly or partially by foreign nationals or controlled by them and would solicit FEC's guidance as to the appropriate criteria to be applied and procedures which should be followed. The Committee, in 1989, and more recently, in response to the Interrogatories propounded by the FEC, has attempted to identify such Corporations. The only basis for identification of such Corporations has been the personal knowledge of those who were engaged in the attempt to identify corporations owned and controlled by foreign nationals.

Given the cosmopolitan and varied ancestral backgrounds of Hawaii citizens, it is also a difficult task to identify individuals who are not citizens by names and addresses alone. Many of our U.S. citizens and permanent residents in Hawaii have Chinese, Japanese and Korean family and given names. Any guidance and aid which the FEC may suggest would also be helpful in making these determinations.

The Committee has also adopted the policy of refunding contributions to those individuals and corporations requesting them if they indicate that they are or are controlled by foreign nationals. Such refunds have, or are in the process of being made.

C. THE COMMITTEE HAS URGED ITS SUPPORTERS TO AVOID SOLICITATION OF CONTRIBUTIONS FROM FOREIGN NATIONALS AND CORPORATIONS OWNED AND CONTROLLED BY FOREIGN NATIONALS

In the Committee's fund-raising activities in 1990, and prior to the receipt of the FEC's Factual and Legal Analysis, the Committee has directed all solicitors under its direction and control to avoid solicitation of contributions from foreign nationals and corporations owned or controlled by foreign nationals.

If, despite such direction, the Committee receives contributions from identifiable foreign national sources, such contributions will be refunded.

D. CONCLUSION AND RESOLUTION

Based on the foregoing and the Committee's agreement for voluntary compliance, the Committee respectfully requests that the FEC deems it appropriate that no action should be taken against the Committee and/or that pre-probable cause conciliation be permitted.

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The Committee further requests that this matter remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A).

Should you have any further questions with respect to this matter, please contact the undersigned at (808) 526-3011.

Sincerely,

Renton L. K. Nip

RENTON L. K. NIP
Counsel for Citizens for Waihee

RLKN:aa
enclosure

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2892
	)	

RESPONSES TO INTERROGATORIES

1. See attached Response.

2. See attached Response.

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RESPONSE TO INTERROGATORY NO. 1 *

A. LOCCHRICIO COMPLAINT DATED 2/2/89

DATE	NAME	AMOUNT	REFUNDED
11/3/86	MASANORI KOBAYASHI	$ 2000	
04/3/87	MASANORI KOBAYASHI	1000	
11/3/86	KEN HAYASHIDA	2000	**
04/3/87	KEN HAYASHIDA	1000	X
11/3/86	HIROSHI KOBAYASHI	2000	
04/3/87	YASUO YASUDA	1000	X

B. LOCCHRICIO COMPLAINT DATED 3/29/89

DATE	NAME	AMOUNT	REFUNDED
11/3/86	MASANORI KOBAYASHI	$ 2000	
04/3/87	MASANORI KOBAYASHI	1000	
11/3/86	KEN HAYASHIDA	2000	*
04/3/87	KEN HAYASHIDA	1000	X
11/3/86	HIROSHI KOBAYASHI	2000	
04/3/87	YASUO YASUDA	1000	X
11/3/86	MITSUNORI INOUE	2000	
5/27/88	ROY HIROSHIGE	250	
08-03-88	OHBAYASHI HAWAII CORP.	2000	
4/3/87	JAPAN AIRLINES	250	
5/10/88	JAPAN AIRLINES	250	
7/31/87	GEM OF HAWAII-PAC	1000	
4/29/88	GEM OF HAWAII-PAC	300	
10/15/86	CPB PAC STATE	1000	
11/19/86	CPB PAC STATE	500	
4/2/87	CPB PAC STATE	1000	
4/6/87	MAUNA LANI RESORT	1500	
4/1/87	MAUNA LANI REESORT PAC	1000	
11/21/86	MIZUTANI TAKAYUKI	500	
05-12-88	DAIEI HAWAII INVESTMENT	500	
03-15-87	NITTO HAWAII	550	
9/12/88	AMERICAN HAWAII CRUISES	250	
9/12/88	AMERICAN HAWAII CRUISES	1000	
6/30/88	PAN PACIFIC CONSTRUCTION	500	
6/30/88	PAN PACIFIC DEVELOPMENT	500	
10/29/86	HAWAII OMORI CORP.	2000	
4/2/87	AZABU USA	1000	
3/15/87	KUMAGAI PROPERTIES	500	

* The Committee's review of records for 1986 is not yet complete.
** Inquiry continues as to whether a refund was made.

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RESPONSE TO INTERROGATORY NO. 2*

DATE	NAME	AMOUNT	REFUNDED
09-26-88	AMERICAN HAWAII CRUISES	$1,000	
05-17-88	AZABU REALTY	250	
04-02-87	AZABU USA	1,000	
05-12-88	DAIEI HAWAII INVESTMENT	500	
05-13-87	DFS, LTD.	1,000	
03-18-87	HAYASHI, MASAO	250	
04-03-87	HAYASHIDA, KEN	1,000	X
05-13-88	HOTEL KAIMANA, INC.	100	
08-06-87	HOUMA INVESTMENTS, INC	250	
05-12-88	HYATT REGENCY WAIKIKI	250	
05-18-88	JIMMY'S CO., LTD.	100	X
05-19-88	KAUPULEHU DEVELOPMENT	1,000	
03-15-87	KUMAGAI PROPERTIES	500	
02-19-87	KUWAYAMA, YUKIHIRO	1,000	X
05-21-88	MAUNA LANI BAY	100	
04-06-87	MAUNA LANI RESORT	1,500	
04-01-87	MAUNA LANI REESORT PAC	1,000	
12-30-88	MITSUNAGA CONSTRUCTION	2,000	
02-19-87	MIYAKE, SYOHEI	1,000	X
04-20-88	NIPPON GOLDEN NETWORK	50	
03-15-87	NITTO HAWAII	550	
10-31-86	NOMURA, ETGO	2,000	X
10-31-86	NOMURA, KOJI	2,000	X
10-31-86	NOMURA, KOKI	2,000	X
10-31-86	NOMURA, SUSHI	2,000	X
10-31-86	NOMURA, YOSAKU	2,000	X
08-03-88	OBAYASHI HAWAII CORP.	2,000	
03-20-87 & 05-10-88	OTAKA, INC.	1,250	
02-19-87	TAKASAKI, MINORU	1,000	X
05-18-87 & 09-01-88	THEO H. DAVIES & CO.	2,500	
05-16-88	TSA INTERNATIONAL, LTD.	500	
05-18-87	WEST BEACH ESTATES	2,000	
04-30-87	WUTEH OF CHINA, INC.	100	
04-03-87	YASUDA, YASUO	1,000	X
02-19-87	YOSHIDA, TATSUHIRO	1,000	X

* The Committee's review of records for 1986 is not yet complete.

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State of Hawaii)
)
County of Honolulu)

Renton L.K. Nip, being first duly sworn on oath, deposes and says that the foregoing answers to interrogatories are true to the best of my knowledge and belief.

Renton L.K. Nip
RENTON L.K. NIP

Subscribed and sworn to before me
this 12th day of July, 1990.

Maria Theresa S. Hart
Notary Public, State of Hawaii

My commission expires: 8-3-92

L. S.

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OGC 7001

GREEN, NING, LILLY, & JONES

Attorneys at Law, A Law Corporation
707 Richards Street, Suite 700, Honolulu, Hawaii 96813
(808) 528-1100

Howard R. Green
Ke-ching Ning
Michael A. Lilly
Stephen A. Jones

Lynnette T. Oka

MAILING ADDRESS
P. O. Box 3439
Honolulu, Hawaii 96801

TELECOPIER
(808) 531-2415

90 JUL 20 AM 9:48

July 17, 1990

Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

90 JUL 20 AM 11:41

Re: Friends of Fasi/MUR 2892

Dear Mr. Noble:

Thank you for your letter of July 10, 1990 to Howard R. Green. We look forward to hearing from you concerning pre-probable cause conciliation.

Regarding Mr. Troy's question on whether or not the refund check to International Commercial Bank of China was cashed, we are currently investigating the matter and will be in contact with you when we find an answer.

If you require any further information or have any questions, please contact me at the above number.

Very truly yours,

Lynnette T. Oka

LTO:dg

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

RESPONDENT AZABU U.S.A. CORPORATION'S,
RESPONSE TO INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS

In response to the Federal Election Commission's request for responses to Interrogatories and Request for Production of Documents, Respondent AZABU U.S.A. CORPORATION, by and through its designated counsel, Raymond S. Iwamoto, Esq., hereby responds as follows:

1. State your name, local address, business, and where you are incorporated.

   Azabu U.S.A. Corporation
   410 Atkinson Drive, Suite 200
   Honolulu, Hawaii 96814
   (808) 944-6855
   Business: Primarily hotel operations plus the ownership and operation of one shopping center
   Incorporated in the State of Hawaii

2. Identify all officers and directors.

   (a) Kitaro Watanabe

Business Address:	Azabu Building Co., Ltd. 1-29-13 Higashi Azabu Minato-ku, Tokyo 106, Japan
Phone Number:	(03) 585-1951
Residence Address:	2-3-1 Kamiosaki, Shinagawa-ku Tokyo 141, Japan
Phone Number:	(03) 442-6250
Occupation/ Position:	Chairman of the Board of Director
Nationality/ Citizenship:	Japan national and citizen

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(b) Tadashi Ohya

Business Address:	Azabu Building Co., Ltd. 1-29-13 Higashi Azabu, Minato-ku, Tokyo 106, Japan
Phone Number:	(03) 585-1951
Residence Address:	9-30-7-509 Seijo Setagaya-ku Tokyo 157, Japan
Phone Number:	(03) 483-0990
Occupation/ Position:	Director and Vice-Chairman
Nationality/ Citizenship:	Japan national and citizen

(c) Hiroo Nagasawa

Business Address:	Azabu U.S.A. Corporation 410 Atkinson Drive, Suite 200 Honolulu, Hawaii 96814
Phone Number:	(808) 944-6855
Residence Address:	583 Kamoku Street, #2601 Honolulu, Hawaii 96826
Phone Number:	(808) 947-1359
Ocupation/ Position:	President and Director
Nationality/ Citizenship:	Japan national and citizen; non-immigrant alien

(d) Yoshio Tsubokawa

Business Address:	Azabu U.S.A. Corporation 410 Atkinson Drive, Suite 200 Honolulu, Hawaii 96814
Phone Number:	(808) 944-6855
Residence Address:	4340 Pahoa Avenue, #17D Honolulu, Hawaii 96816
Phone Number:	(808) 737-3734
Occupation/ Position:	Executive Vice President/ Secretary/Treasurer and Director
Nationality/ Citizenship:	Japan national and citizen; non-immigrant alien

(e) Koichi Tadokoro

Business Address:	Azabu U.S.A. Corporation 410 Atkinson Drive, Suite 200 Honolulu, Hawaii 96814
Phone Number:	(808) 944-6855
Residence Address:	77-331 Sunset Drive Kailua-Kona, Hawaii 96740
Phone Number:	(808) 329-8779

	Occupation/ Position:	Executive Vice President (Real Estate) and Director
	Nationality/ Citizenship:	(Japan national); Naturalized U.S. citizen in August 1989
(f)	Ichiro Shioji	
	Business Address:	Azabu Building Co., ltd. 1-29-13 Higashi Azabu Minato-ku, Tokyo 106, Japan
	Phone Number:	(03) 585-1951
	Residence Address:	2-16-1 Ebara, Shinagawa-ku Tokyo 142, Japan
	Phone Number:	(03) 782-5275
	Occupation/ Position:	Director
	Nationality/ Citizenship:	Japan national and citizen
(g)	Masahiro Yamaguchi	
	Business Address:	Azabu U.S.A. Corporation 410 Atkinson Drive, Suite 200 Honolulu, Hawaii 96814
	Phone Number:	(808) 944-6855
	Residence Address:	583 Kamoku Street, #607 Honolulu, Hawaii 96826
	Phone Number:	(808) 942-0583
	Occupation/ Position:	Vice President-Projects
	Nationality/ Citizenship:	Japan national and citizen, Permanent Resident Alien
(h)	Avelene Yee	
	Business Address:	Azabu U.S.A. Corporation 410 Atkinson Drive, Suite 200 Honolulu, Hawaii 96814
	Phone Number:	(808) 944-6855
	Residence Address:	3721 Pahoa Avenue Honolulu, Hawaii 96816
	Phone Number:	(808) 734-1659
	Occupation/ Position:	Vice President-Finance
	Nationality/ Citizenship:	U.S. national and citizen
(i)	Albert Keliikuloa	
	Business Address:	Azabu U.S.A. Corporation 410 Atkinson Drive, Suite 200 Honolulu, Hawaii 96814
	Phone Number:	(808) 944-6855

Residence Address:	5044 Kilauea Avenue Honolulu, Hawaii 96816
Phone Number:	(808) 734-6459
Occupation/ Position:	Vice President-Projects
Nationality/ Citizenship:	U.S. national and citizen

(j) Atsuo Matsui

Business Address:	South Eagle Hawaii 1600 Kapiolani Blvd., Suite 1401 Honolulu, Hawaii 96814
Phone Number:	(808) 955-1100
Residence Address:	1561 Kanunu Street, #1604 Honolulu, Hawaii 96814
Phone Number:	(808) 955-1903
Occupation/ Position:	Executive Vice President (resigned July 20, 1989)
Nationality/ Citizenship:	Japan national and citizen

(k) Shigemi Sunada

Business Address:	Azabu Space Creation Co., Ltd. 800 Excel Pavilion 1-9-4, Azabujuban Minato-ku, Tokyo, Japan
Phone Number:	(03) 505-0751
Residence Address:	No. 202, 2-33 Minami-Azabu 1-chome, Minato-ku Tokyo, Japan
Phone Number:	(03) 451-1402
Occupation/ Position:	Former Director (resigned in 1987)
Nationality/ Citizenship:	Japan national and citizen

3. Identify all management personnel.

(a) Koen Witteveen

Business Address:	Ramada Renaissance Ala Moana Hotel 410 Atkinson Drive Honolulu, Hawaii 96814
Phone Number:	(808) 955-4811
Residence Address:	Same as business
Phone Number:	Same as business

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	Nationality/ Citizenship:	The Netherlands national; Permanent Resident Alien (A-26045689)
(b)	Gunther J. Hatt	
	Business Address:	FHS Marketing Company, Inc. Ward Plaza 210 Ward Avenue Suite 328, Bldg. C Honolulu, Hawaii 96814
	Phone Number:	(808) 533-0657
	Residence Address:	188 Polihale Place Honolulu, Hawaii 96825
	Phone Number:	(808) 395-7385
	Occupation/ Position:	Former General Manager, Ramada Renaissance Ala Moana Hotel (resigned on May 31, 1988)
	Nationality/ Citizenship:	German national; Naturalized U.S. citizen
(c)	Charlene Goo	
	Business Address:	Keauhou Beach Hotel 78-6740 Alii Drive Kailua-Kona, Hawaii 96740
	Phone Number:	(808) 322-3441
	Residence Address:	78-120 Holua Road Kailua-Kona, Hawaii 96740
	Phone Number:	(808) 322-9783
	Occupation/ Position:	Manager, Keauhou Beach Hotel
	Nationality/ Citizenship:	U.S. national and citizen
(d)	Matthew Bailey	
	Business Address:	Kapalua Bay Hotel 1 Bay Drive Kapalua, Maui, Hawaii 96761
	Phone Number:	(808) 669-5656
	Residence Address:	Same
	Phone Number:	Same
	Occupation/ Position:	Former Manager, Keauhou Beach Hotel
	Nationality/ Citizenship:	U.S. national and citizen

9404357339

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

Yes.

Azabu Building Co., Ltd. 100%	
Address:	1-29-13 Higashi Azabu Minato-ku, Tokyo 106, Japan
Phone Number:	(03) 585-1951
Chief Executive Officer:	Tadashi Ohya (see information in 2(c) above)
Agent for Service of Process:	Raymond S. Iwamoto, Esq. c/o Goodsill Anderson Quinn & Stifel 1600 Bancorp Tower 130 Merchant Street Honolulu, Hawaii 96813
Phone Number:	(808) 547-5600

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

<u>General Corporate Contributions</u>:

Date	Name	Amount	Refund
3/87	Friends of Waihee	$ 1,000.00	No
4/87	Jim Dahlberg	100.00	No
9/87	Friends of Takashi Domingo	250.00	No
1/88	Friends of Carpenter	200.00	No
2/88	Friends of Carpenter	1,800.00	No
3/88	Friends of Milton Holt	300.00	No
3/88	Friends of S. Yamashiro	1,000.00	No
3/88	Friends of Kalani Schutte	1,000.00	No
6/88	Hui O' Abercrombie	50.00	No
6/88	Friends of Carpenter	300.00	No
10/88	Friends of Carpenter	2,000.00	No

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Contributions by Hotels:

(a) Ramada Renaissance Ala Moana Hotel:

Date	Name	Amount	Refund
86/87	Friends of Sen. Dickie Wong	$ 1,000.00	No
86/87	Friends of Gerry Hagino	500.00	No
2/89	Friends of Romy Cachola	100.00	No
3/89	Friends of Milton Holt	100.00	No
4/89	Donna Kim Scholarship	225.00	No
6/89	Romy Cachola Golf	500.00	No
6/89	Citizens for Waihee	200.00	No
3/90	Friends of Romy Cachola	100.00	No
4/90	Milton Holt Fundraiser	100.00	No
5/90	Citizens for Waihee	500.00	No

(b) Keauhou Beach Hotel:

Date	Name	Amount	Refund
4/88	Milton Holt	$ 25.00	No

No, we are not required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

   With respect to the general corporate contributions, Koichi Tadokoro was the person who decided to make each such contribution. As to the hotels, contributions for the Ramada Renaissance Ala Moana Hotel were decided by Gunther J. Hatt until he resigned in May 1988, then by Koen Witteveen; and as to Keauhou Beach Hotel, the contribution in April 1988 was decided by Matthew Bailey.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

   The funds used for contributions made by Azabu U.S.A. Corporation came from funds generated solely by Azabu U.S.A. Corporation from its hotel operations in the U.S. (Hawaii). No funds were provided directly or indirectly by a foreign national, including the parent corporation.

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8. State whether you maintain a political action committee. If so, specify the source of the funds used by such committee. Identify all persons associated with the operation of such political action committee.

No.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

No.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

Hiroo Nagasawa
See information above in 2(c)
President and Director of Azabu U.S.A. Corporation
Associated with the respondent since February 1987.

I hereby swear under oath that the foregoing responses are true to the best of my knowledge and belief.

HIROO NAGASAWA
President and Director
Azabu U.S.A. Corporation

Subscribed and sworn to before me
this 11th day of July, 1990.

Notary Public, First Judicial Circuit
State of Hawaii

My commission expires: 6/28/92

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

RESPONDENT AZABU REALTY, INC.'S
RESPONSE TO INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS

In response to the Federal Election Commission's request for responses to Interrogatories and Request for Production of Documents, Respondent AZABU REALTY, INC., by and through its designated counsel, Raymond S. Iwamoto, Esq., hereby responds as follows:

1. State your name, local address, business, and where you are incorporated.

   Azabu Realty, Inc.
   410 Atkinson Drive, Suite #200
   Honolulu, Hawaii 96814
   Business: Buying and selling real estate
   Place of Incorporation: State of Hawaii

   On April 2, 1990, Azabu Realty, Inc. was merged with and into Azabu U.S.A. Corporation (the latter being the surviving corporation). Therefore, Azabu Realty, Inc. no longer exists as a separate legal entity.

2. Identify all officers and directors.

   (a) Kitaro Watanabe
   Business Address: Azabu Building Co., Ltd.
   1-29-13 Higashi Azabu,
   Minato-ku, Tokyo 106, Japan
   Phone Number: (03) 585-1951
   Residence Address: 2-3-1 Kamiosaki, Shinagawa-ku, Tokyo 141, Japan
   Phone Number: (03) 442-6250

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	Occupation/ Position:	Chairman of the Board and Director
	Nationality/ Citizenship:	Japan national and citizen
(b)	Tadashi Ohya	
	Business Address:	Azabu Building Co., Ltd. 1-29-13 Higashi Azabu Minato-ku, Tokyo 106, Japan
	Phone Number:	(03) 585-1951
	Residence Address:	9-30-7-509 Seijo Setagaya-ku, Tokyo 157, Japan
	Phone Number:	(03) 483-0990
	Occupation/ Position:	President and Director
	Nationality/ Citizenship:	Japan national and citizen
(c)	Koichi Tadokoro	
	Business Address:	Azabu U.S.A. Corporation 410 Atkinson Drive, Suite 200 Honolulu, Hawaii 96814
	Phone Number:	(808) 944-6855
	Residence Address:	77-331 Sunset Drive, Kailua-Kona, Hawaii 96740
	Phone Number:	(808) 329-8779
	Occupation/ Position:	Executive Vice President and Director
	Nationality/ Citizenship:	(Japan national); Naturalized U.S. citizen in August 1989
(d)	Yoshio Tsubokawa	
	Business Address:	Azabu U.S.A. Corporation 410 Atkinson Drive, Suite 200 Honolulu, Hawaii 96814
	Phone Number:	(808) 944-6855
	Residence Address:	4340 Pahoa Avenue, #17D Honolulu, Hawaii 96816
	Phone Number:	(808) 737-3734
	Occupation/ Position:	Vice President/Treasurer/ Secretary and Director
	Nationality/ Citizenship:	Japan national and citizen; non-immigrant alien
(e)	Akio Sato	
	Business Address:	ANIC Corporation 1-2-8 Azabu Juban Azabu, Minato-ku Tokyo, Japan

Phone Number:	(03) 505-1502
Residence Address:	2-3, Kajiwara, 3-chome, Kamakura-shi, Kanagawa Prefecture, Japan
Phone Number:	(04) 6743-1101
Occupation/ Position:	Director
Nationality/ Citizenship:	Japan national and citizen

(f) Ichiro Shioji

Business Address:	Azabu Building Co., Ltd. 1-29-13 Higashi Azabu, Minato-ku, Tokyo 106, Japan
Phone Number:	(03) 585-1951
Residence Address:	2-16-1 Ebara, Shinagawa-ku Tokyo 142, Japan
Phone Number:	(03) 782-5275
Occupation/ Position:	Director
Nationality/ Citizenship:	Japan national and citizen

(g) Shigemi Sunada

Business Address:	Azabu Space Creation Co., Ltd. 800 Excel Pavilion 1-9-4 Azabujuban, Minato-ku Tokyo, Japan
Phone Number:	(03) 505-0751
Residence Address:	No. 202, 2-33, Minami Azabu 1-chome, Minato-ku Tokyo, Japan
Phone Number:	(03) 451-1402
Occupation/ Position:	Former Director (resigned in 1987)
Nationality/ Citizenship:	Japan national and citizen

3. Identify all management personnel.

Albert Keliikuloa

Business Address:	410 Atkinson Drive, Suite 200 Honolulu, Hawaii 96814
Phone Number:	(808) 944-6855
Residence Address:	5044 Kilauea Avenue Honolulu, Hawaii 96816
Phone Number:	(808) 734-6459
Occupation/ Position:	Principal Broker
Nationality/ Citizenship:	U.S. national and citizen

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

Azabu Building Co., Ltd., 100%
1-29-13 Higashi Azabu
Minato-ku, Tokyo 106, Japan
(03) 585-1951
Chief Executive Officer: Tadashi Ohya (see information in 2(b) above)
Agent for Service of Process: Raymond S. Iwamoto, Esq.
c/o Goodsill Anderson Quinn & Stifel
1600 Bancorp Tower
130 Merchant Street
Honolulu, Hawaii 96813
Phone Number: (808) 547-5600

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

Date	Name	Amount	Refund
2/88	Sen. Richard Matsuura	$500.00	No
2/88	Friends of Gerry Hagino	250.00	No
3/88	Friends of Ann Kobayashi	350.00	No
3/88	Friends of Virginia Isbell	125.00	No
5/88	Citizens for John Waihee	250.00	No
6/88	Mink Campaign	250.00	No
6/88	Hui O' Abercrombie	1,000.00	No
6/88	Fasi	2,000.00	No
7/88	Lorraine Jitchaku	1,000.00	No

No, we are not required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

Koichi Tadokoro
See information in 2(c) above.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

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The funds used for contributions made by Azabu Realty, Inc. came from funds generated solely by Azabu Realty, Inc. from its real estate activities in the U.S. No funds were provided directly or indirectly by a foreign national, including the parent corporation.

8. State whether you maintain a political action committee. If so, specify the source of the funds used by such committee. Identify all persons associated with the operation of such political action committee.

   No.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

   No.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

    Koichi Tadokoro
    See information in 2(c) above
    Associated with the respondent since July 1987.

I hereby swear under oath that the foregoing responses are true to the best of my knowledge and belief.

KOICHI TADOKORO
Executive Vice President/
Director
formerly of Azabu Realty, Inc.
and currently of Azabu U.S.A
Corporation

Subscribed and sworn to before me
this 11th day of July, 1990.

Notary Public, First Judicial Circuit
State of Hawaii

My commission expires: 8/28/92

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FEDERAL ELECTION COMMISSION

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

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OFFICE OF GENERAL COUNSEL
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RESPONDENT PACIFICO CREATIVE SERVICE, INC.'S RESPONSE TO INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

In response to the Federal Election Commission's request for responses to Interrogatories and Request for Production of Documents, Respondent PACIFICO CREATIVE SERVICE, INC., by and through its designated counsel, Russell S. Kato, Esq., hereby responds as follows:

1. State your name, local address, business, and where you are incorporated.

Pacifico Creative Service, Inc.
2270 Kalakaua Ave. #1600
Honolulu, Hawaii 96815
Business: Travel Agency
Place of Incorporation: State of Hawaii

2. Identify all officers and directors.

Directors:

(a) Shigeo Kameda
Occupation/ Position: Chairman of the Board
Nationality/ Citizenship: Japan national and citizen

(b) Genro Kashiwa
Business Address: 1600 Bancorp Tower
130 Merchant Street
Honolulu, Hawaii 96813
Residence Address: 5341 Apo Drive
Honolulu, Hawaii 96821
Phone Number: (808) 373-1578
Occupation/ Position: Secretary; Director

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Nationality/
Citizenship: U.S. national and U.S. citizen

(c) Kenichiro Matsueda
Occupation/
Position: Director
Nationality/
Citizenship: Japan national and citizen

(d) Katsuya Nohara
Occupation/
Position: Director
Nationality/
Citizenship: Japan national and citizen

(e) Ko Ueno
Occupation/
Position: President; Director
Nationality/
Citizenship: Japan national and citizen

(f) Takayuki Wakaki
Occupation/
Position: Treasurer; Director
Nationality/
Citizenship: Japan national and citizen

Officers:

(a) Ko Ueno, President
300 North Continental Blvd., Suite 410
El Segundo, California 90245
(213) 606-5311

(b) Genro Kashiwa, Secretary
(See information above)

(c) Takayuki Wakaki, Treasurer
(See information above)

3. Identify all management personnel.

Management Personnel
(Hawaii Regional Office Only):

(a) Kazuyoshi Takashima
Occupation/
Position: Regional Manager
Nationality/
Citizenship: Japan national and citizen; non-immigrant alien in U.S.

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(b) Kazuhito Senna
Occupation/
Position: Asst. Regional Manager
Nationality/
Citizenship: Japan national and citizen; non-immigrant alien in U.S.

(c) Yuzo Kojima
Occupation/
Position: Asst. Regional Manager
Nationality/
Citizenship: Japan national and citizen; non-immigrant alien in U.S.

(d) Shojiro Watanabe
Occupation/
Position: Manager
Nationality/
Citizenship: Japan national; permanent resident alien in U.S.

(e) Haruo Orito
Occupation/
Position: Manager
Nationality/
Citizenship: Japan national and citizen; non-immigrant alien in U.S.

(f) Takeshi Mino
Occupation/
Position: Manager
Nationality/
Citizenship: Japan national and citizen; non-immigrant alien in U.S.

(g) Tamotsu Takemoto
Occupation/
Position: Manager
Nationality/
Citizenship: U.S. national and citizen

(h) Takenori Gojo
Occupation/
Position: Manager
Nationality/
Citizenship: Japan national; permanent resident alien in U.S.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

Yes. The following entities have ownership rights in Pacifico Creative Service, Inc.:

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(a) Japan Creative Tours, Ltd.
Address: P.O. Box 108
World Trade Center Annex
2-4-1 Hamamatsu-cho, Minato-ku
Tokyo 105, Japan

(b) Orient Dynamic Co., Ltd.
Address: 20th Floor, Gloucester Tower
The Landmark
11 Peddler Street
Central, Hong Kong

(c) Japan Center Co., Ltd.
Address: 4th Floor, World Trade Center Annex
2-4-1 Hamamatsu-cho, Minato-ku
Tokyo 105, Japan

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

Date: August 31, 1987
Amount: $500.00
Recipient: Friends of Fasi

No refund has been received.

No, we are not required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

Yuzo Kojima
(See information in 3(c) above)

Neither the Board of Directors nor the officers participated in the decision regarding the stated contribution.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

The $500.00 contribution made by Pacifico Creative Service, Inc. to "Friends of Fasi" came from funds generated solely by Pacifico Creative Service Hawaii, Inc., and not by any of its parent corporations. No funds

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were provided directly or indirectly by a foreign national. Further, the $500.00 contribution came from funds generated by Pacifico Creative Service, Inc.'s Hawaii operations. Pacifico Creative Service, Inc. derives most of its revenues from U.S. activities.

8. State whether you maintain a political action committee. If so, specify the source of the funds used by such committee. Identify all persons associated with the operation of such political action committee.

No.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

No.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

(a) Yuzo Kojima
(See information above)
Asst. Regional Manager
Associated with the respondent since July 1987.

(b) Russell S. Kato
Attorney for Pacifico Creative Service, Inc.
Goodsill Anderson Quinn & Stifel
1600 Bancorp Tower
130 Merchant Street
Honolulu, Hawaii 96813
(808) 547-5600

The foregoing responses are true to the best of my knowledge and belief.

Russell S. Kato

RUSSELL S. KATO
Attorney for
Pacifico Creative Service, Inc.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2846
)

RESPONDENT JAPAN AIR LINES CO., LTD.'S RESPONSE TO
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

In response to the Federal Election Commission's request for responses to Interrogatories and Request for Production of Documents, Respondent JAPAN AIR LINES CO., LTD., by and through its designated counsel, Russell S. Kato, Esq., hereby responds as follows:

1. State your name, local address, business, and where you are incorporated.

Japan Air Lines Co., Ltd.
165 South King Street
Honolulu, Hawaii 96813
Business: Scheduled and unscheduled air transport business, aircraft maintenance, and other additional or related enterprises.
Place of Incorporation: Japan

2. Identify all officers and directors.

Directors:

(a) Fumio Watanabe
Business Address: 2-7-3 Marunouchi Chiyoda-ku, Tokyo 106, Japan
Phone Number: (03) 284-2315
Occupation/ Position: Chairman of the Board of Directors

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	Nationality/ Citizenship:	Japan national and citizen
(b)	Mitsunari Kawano	
	Business Address:	1-46-11 Gondazaka, Hodogaya-ku, Yokohama, Japan
	Occupation/ Position:	Senior Managing Director
	Nationality/ Citizenship:	Japan national and citizen
(c)	Toshio Nagaoka	
	Occupation/ Position:	Senior Managing Director
	Nationality/ Citizenship:	Japan national and citizen
(d)	Ichikazu Shimizu	
	Occupation/ Position:	Managing Director
	Nationality/ Citizenship:	Japan national and citizen
(e)	Kunietsu Sakuraba	
	Occupation/ Position:	Managing Director
	Nationality/ Citizenship:	Japan national and citizen
(f)	Akio Nakamura	
	Occupation/ Position:	Managing Director
	Nationality/ Citizenship:	Japan national and citizen
(g)	Shigeo Kasumi	
	Occupation/ Position:	Managing Director
	Nationality/ Citizenship:	Japan national and citizen
(h)	Yoshiyasu Mayumi	
	Occupation/ Position:	Managing Director
	Nationality/ Citizenship:	Japan national and citizen
(i)	Hiroyuki Inagawa	
	Business Address:	4-6-1 Akasaka, Minato-ku, Tokyo, Japan

	Occupation/ Position:	Managing Director
	Nationality/ Citizenship:	Japan national and citizen
(j)	Michio Okuno	
	Occupation/ Position:	Managing Director
	Nationality/ Citizenship:	Japan national and citizen
(k)	Yoshiro Matsuo	
	Occupation/ Position:	Director
	Nationality/ Citizenship:	Japan national and citizen
(l)	Kozo Miyasaka	
	Occupation/ Position:	Director
	Nationality/ Citizenship:	Japan national and citizen
(m)	Shinji Watarai	
	Business Address:	11-8 Sarugaku-sho, Shibuya-ku Maison Daikan-yama #7A Tokyo, Japan
	Occupation/ Position:	Director
	Nationality/ Citizenship:	Japan national and citizen
(n)	Susumu Ozawa	
	Occupation/ Position:	Director
	Nationality/ Citizenship:	Japan national and citizen
(o)	Yoshio Iwao	
	Occupation/ Position:	Director
	Nationality/ Citizenship:	Japan national and citizen
(p)	Toshiro Shinano	
	Occupation/ Position:	Director
	Nationality/ Citizenship:	Japan national and citizen

(q) **Mitsuo Ando**
Occupation/
Position: **Director**
Nationality/
Citizenship: **Japan national and citizen**

(r) Mitsuo Shiotsuki
Occupation/
Position: Director
Nationality/
Citizenship: Japan national and citizen

(s) Seizo Kuroda
Occupation/
Position: Director
Nationality/
Citizenship: Japan national and citizen

(t) Susumu Ashino
Occupation/
Position: Director
Nationality/
Citizenship: Japan national and citizen

(u) **Kimiya Nakasato**
Occupation/
Position: **Director**
Nationality/
Citizenship: **Japan national and citizen**

(v) **Akira Kondo**
Occupation/
Position: **Director**
Nationality/
Citizenship: **Japan national and citizen**

(w) Yasuo Komatsu
Occupation/
Position: Director
Nationality/
Citizenship: Japan national and citizen

(x) Osamu Mitsuyasu
Occupation/
Position: Director
Nationality/
Citizenship: Japan national and citizen

(y) Akio Kono
Occupation/
Position: Director
Nationality/
Citizenship: Japan national and citizen

(z) Tomoya Iwasaki
Business Address: 4-16-14 Den-en Choufu, Ota-ku, Tokyo, Japan
Occupation/
Position: Director
Nationality/
Citizenship: Japan national and citizen

(aa) Yoshihiko Murata
Occupation/
Position: Director
Nationality/
Citizenship: Japan national and citizen

(bb) Osamu Igarashi
Occupation/
Position: Director
Nationality/
Citizenship: Japan national and citizen

(cc) Tamotsu Goto
Occupation/
Position: Director
Nationality/
Citizenship: Japan national and citizen

(dd) Shinzo Suto
Occupation/
Position: Director
Nationality/
Citizenship: Japan national and citizen

(ee) Jiro Sagara
Occupation/
Position: Director
Nationality/
Citizenship: Japan national and citizen

(ff) Eishiro Saito
Occupation/
Position: Director
Nationality/
Citizenship: Japan national and citizen

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Officers:

(a) Susumu Yamaji, President
2-7-3 Marunouchi
Chiyoda-ku, Tokyo 106, Japan
(03) 284-3215
Japan national and citizen

(b) Matsuo Toshimitsu, Executive Vice President
2-7-3 Marunouchi
Chiyoda-ku, Tokyo 106, Japan
(03) 284-2315
Japan national and citizen

3. Identify all management personnel.

Management Personnel
(Hawaii Regional Office Only):

Tatsumi Hayashi
Residence Address: 3086 La Pietra Circle
Honolulu, Hawaii 96815
Occupation/
Position: Regional Manager
Nationality/
Citizenship: Japan national and citizen

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

No.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

Date	Recipient	Amount	Refund
1986			
2/04/86	Friends of Carpenter	$125.00	No
2/21/86	Friends of Senator Matsuura	90.00	No
7/03/86	Friends of Kevin & Joe Kuroda	70.00	No

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2/19/87	Friends of Carpenter	$125.00	No
2/19/87	Friends of Matsuura	25.00	No
3/13/87	Citizens for Waihee	250.00	No
5/27/87	Friends of Tony Kunimura	100.00	No

1988

1/28/88	Gala Affair for Dante Carpenter	$200.00	No
2/29/88	Friends of Dick Matsuura	50.00	No
3/01/88	Friends of Paul Oshiro	100.00	No
3/01/88	Friends of Romy Cachola	100.00	No
5/01/88	Citizens for Waihee	250.00	No
6/20/88	Friends of Tony Kunimura	100.00	No

No, we are not required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

Takao Matsusue
Former Regional Manager
2-7-3 Marunouchi
Chiyoda-ku, Tokyo 106, Japan
(03) 284-2315

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

The funds used for contributions came from funds generated by Japan Air Lines Co., Ltd.

8. State whether you maintain a political action committee. If so, specify the source of the funds used by such committee. Identify all persons associated with the operation of such political action committee.

No.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how

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it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

No.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

(a) Yasushi Nishizawa
Senior Staff Assistant-Administration
Associated with the respondent since March 1966.
U.S. citizen

(b) Russell S. Kato
Attorney for Japan Air Lines Co., Ltd.
Goodsill Anderson Quinn & Stifel
1600 Bancorp Tower
130 Merchant Street
Honolulu, Hawaii 96813
(808) 547-5600

The foregoing responses are true to the best of my knowledge and belief.

Russell S. Kato

RUSSELL S. KATO
Attorney for
Japan Air Lines Co., Ltd.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

RESPONDENT OTAKA, INC.'S
RESPONSE TO INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS

In response to the Federal Election Commission's request for responses to Interrogatories and Request for Production of Documents, Respondent OTAKA, INC., by and through its designated counsel, Russell S. Kato, Esq., hereby responds as follows:

1. State your name, local address, business, and where you are incorporated.

Otaka, Inc.
2552 Kalakaua Ave.
Honolulu, Hawaii 96815
(808) 924-4067
Business: Hotel, country club and resort operations
Place of Incorporation: State of Hawaii

2. Identify all officers and directors.

Officers: (All officers and directors have the same address and telephone number as Otaka, Inc. as listed above)

(a) Yukio Takahashi
Occupation/
Position: Chief Executive Officer
Nationality/
Citizenship: Japan national; permanent resident alien in U.S.

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(b) B. Stephen Kawagishi
Occupation/
Position: President; Treasurer
Nationality/
Citizenship: U.S. national and citizen

(c) Tomiyoshi Kataoka
Occupation/
Position: Senior Vice President
Nationality/
Citizenship: Japan national and citizen; nonimmigrant E-2 Visa (U.S.)

(d) Sabrina McKenna
Occupation/
Position: Secretary
Nationality/
Citizenship: U.S. national and citizen

Directors:

All officers listed above and Norman Inaba, Director U.S. national and citizen

3. Identify all management personnel.

Management Personnel: (All managers have the same address and telephone number listed above for Otaka, Inc.)

See list of managers attached hereto as Exhibit "A".

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

Yes. The following entities have ownership rights in Otaka, Inc.:

(a) Takao Building Development Co., Ltd.
50% ownership
Sengokuyama Annex 302
3-20 Toranomo
5-chome, Minato-ku
Tokyo, Japan
(813) 438-1800
Yukio Takahashi, Chief Executive Officer

(b) K. K. Daini Seven
50% ownership
2-Nishi-4-chome
Kita-1-jyo
Chuku, Sapporo, Japan
Yukio Takahashi, Chief Executive Officer

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date of the refund. State whether you are required to file reports with any state election board.

See list of contributions attached as Exhibit "B". No refunds have been made of the listed contributions.

No, we are not required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

B. Stephen Kawagishi is the person who authorizes all political contributions.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

The contributions listed were made by Otaka, Inc. using funds generated by Otaka, Inc. from its U.S. operations, primarily in Hawaii. No funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of the funds used by such committee. Identify all persons associated with the operation of such political action committee.

No.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

No.

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10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

(a) Bryan Mukai
Assistant Controller
2571 Lemon Road
Honolulu, Hawaii 96815
(808) 922-3177
Associated with the respondent for 14 months.

(b) Lorene Kim
Accounting Clerk
2571 Lemon Road
Honolulu, Hawaii 96815
(808) 922-3177
Associated with the respondent for 13 months.

(c) Russell S. Kato
Attorney for Otaka, Inc.
Goodsill Anderson Quinn & Stifel
1600 Bancorp Tower
130 Merchant Street
Honolulu, Hawaii 96813
(808) 547-5600

The foregoing responses are true to the best of my knowledge and belief.

Russell S. Kato

RUSSELL S. KATO
Attorney for Otaka, Inc.

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EXHIBIT "A"

OTAKA, INC. MANAGERS:

Name and Position Title/Division	Nationality	U.S. Visa
ANDERSON, Denise, Director of Sales	U.S.A	
AZUMA, Marsha Y., Director of Human Resources	U.S.A	
FONG, Yoshiko, Sales Manager-Japan Sales	Japan	P.R.
MIRATA, Anthony T., Controller	U.S.A.	
KANE, Leona K., Associate Marketing Director	U.S.A.	

HOLIDAY INN WAIKIKI BEACH

AULD, Josephine, Executive Housekeeper	U.S.A.	
BATALONA, Lorraine, Chief Telephone Operator	U.S.A.	
CABICO, Lydia, Assistant Executive Housekeeper	U.S.A.	
CRUZATA, Nick, Chief Engineer	U.S.A.	
DEPONTE, Lynette, Assistant Restaurant Manager	U.S.A.	
GIRARD, Alice, Restaurant Manager	U.S.A.	
GREER, Nancy, Personnel Manager	U.S.A.	
HIMEDA, Clark, Purchasing Agent	U.S.A.	
KAINUKAUA, Terri-Lee, Front Office Cashier Supervisor	U.S.A.	
KEKAULA-CASTILLO, Lovelyn, Sales Manager	U.S.A.	
KINOSHITA, Roberta, Assistant Controller	U.S.A.	
LAWRENCE, Sheila, Reservations Manager	U.S.A.	
LEUNG, Aaron, Assistant Restaurant Manager	United Kingdom	P.R.
LIM, James, Assistant Hotel Manager	U.S.A.	

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Name and Position Title/Division	Nationality	U.S. Visa
MONCES, Romeo, Resident Manager	U.S.A.	
NAPAEPAE, Ernette, Credit Manager	U.S.A.	
PARK-CHUN, Corenne, Assistant Hotel Manager	U.S.A.	
PASCUA, Romidia, Assistant Housekeeper	Philippines	P.R.
PIOSALAN, Denis, Director of Sales	U.S.A.	
RAFAEL, Francisca, Assistant Housekeeper	U.S.A.	
SABALBURO, Renato, Executive Chef	U.S.A.	
SAIKI, Rance, Food & Beverage Manager	U.S.A.	
SAKAI, Jay, Restaurant Manager	U.S.A.	
SHITANISHI, Dianna, Assistant Hotel Manager	U.S.A.	
STILLMAN, George, Receiving Supervisor	U.S.A.	
TRUJILLO, Marie Elena, Assistant Hotel Manager	U.S.A.	
YOSHIDA, Dwight, Sous Chef	U.S.A.	
YOSHIDA, Nobuko, Assistant Housekeeper	U.S.A.	

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Name and Position Title/Division	Nationality	U.S. Visa
KONA COUNTRY CLUB		
TURNER, Elbert, General Manager	U.S.A	
ABE, Michele, Personnel Administrator	U.S.A	
BARBA, Barbara, Food & Beverage Manager	U.S.A	
DELATORRE, Glenn, Golf Course Superintendent	U.S.A.	
ITO, Masaharu, Maintenance Manager	Japan	L-1
KE, Frank Jr., Executive Chef	U.S.A.	
KURII, Kazuko, Administrative Manager	Japan	L-1
O'NEILLA, Joyce, Pro Shop Manager	U.S.A.	
MOMSEY, Mike, Accounting Manager	Japan	P.R.

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Name and Position Title/Division	Nationality	U.S. Visa
KONA BEACH RESORT		
ADAMS, Albert, Assistant Hotel Manager	U.S.A.	
BEWERING, Susie, Golf Professional	U.S.A.	
CHAPMAN, Henry, Accounting Supervisor	U.S.A.	
CHAVEZ, Martha, Convention Services Manager	U.S.A.	
DANIELS, Sandra, Sales Manager	U.S.A.	
DECAMERA, Staffor, Executive Chef	U.S.A.	
ESPE, Thomas, Assistant Hotel Manager	U.S.A.	
FERNANDEZ, Julio, Purchasing Agent	U.S.A.	
FRANCISCO, Wayne, Dining Room Manager	U.S.A.	
FUKUNAGA, Sally, Credit Manager	U.S.A.	
GALARZA, Rockford, Beverage Manager	U.S.A.	
HIGUCHI, Masao, Resident Assistant Hotel Manager	Japan	E-2
HONDA, Alvin, Controller	U.S.A.	
KALIKA, Winona, Assistant Housekeeper	U.S.A.	
KAUNE, Joseph, Assistant Housekeeper	U.S.A.	
KAUNE, Shirley, Executive Housekeeper	U.S.A.	
LEWI, David Jr., Banquet/Catering Manager	U.S.A.	
LIGHTNER, Carol, Guest Activities Manager	U.S.A.	
MOSSMAN, Michael, Chief Engineer	U.S.A.	
NAKAHARA, Eleanor, Personnel Manager	U.S.A.	
NAKEA, Violet, Assistant Housekeeper	U.S.A.	
NEDERSEN, Craig, General Manager	U.S.A.	

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Name and Position Title/Division	Nationality	U.S. Visa
[illegible] RESORT		
[illegible], Natalie, Director of Sales	U.S.A.	
[illegible], Julius, Dining Room Manager-Maisse	United Kingdom	P.R.
PALAFOX, Patsy, Sales Manager	U.S.A.	
PI, Aileen, Personnel Assistant	U.S.A.	
REVITA, Robert, Sous Chef	U.S.A.	
ROSENSTER, Peter, Reservations Manager	U.S.A.	
ROY-DEAGUIAR, Lisa, Catering/Wedding Coordinator	U.S.A.	
TANAKA, Jeffrey, Sous Chef	U.S.A.	
VILLAVERDE, Mary, Front Office Manager	U.S.A.	
[illegible]ZA, William, Food & Beverage Manager	U.S.A.	
YAMADA, Lorraine, Guest Relations	U.S.A.	
YRIGUES, Rose, Assistant Housekeeper	U.S.A.	

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Name and Position Title/Division	Nationality	U.S. Visa
HAWAIIAN RESORT HOTEL		
AGUADA, Peter, Inventory Control Manager	U.S.A.	
AH SING, Antoinette, Executive Asst. Housekeeper	U.S.A.	
ASATO, Jean, Sr. International Sales Coordinator	U.S.A	
BARON, Rhoda, Catering Coordinator	U.S.A.	
CHOCK, Colin, Assistant Manager-The Secret	U.S.A.	
CHRISTOFIC, Christopher, Communication Manager	U.S.A.	
CHUN, Valerie, Assistant General Cashier	U.S.A.	
COLDEN, Kevin, Director of Training	U.S.A.	
CROSS, Tom, Assistant Food & Beverage Director	U.S.A.	
DUARTE, Jorge, Assistant Manager-Gummery	U.S.A.	
ESPINUEVA, Stephen, Assistant Housekeeper	U.S.A.	
FUCHIGAMI, Chandelle, Assistant Controller	U.S.A.	
FULLER, Gregory, Chief Engineer	U.S.A.	
FURAKOSHI, Dale, Assistant Hotel Manager	U.S.A.	
GOTO, Mark, Catering Sales Manager	U.S.A.	
HAINES, Velina, Director of Human Resources	U.S.A.	
HIGA, Calvin, Assistant Room Service Manager	U.S.A.	
HIRAI, Hiram, Banquet Manager	U.S.A.	
HONMA, Linda, Assistant Front Office Manager	U.S.A.	
HONNDLEIN, Wolfgang, Executive Sous Chef	Germany	P.R.
HOTTA, Jeanne, General Cashier	U.S.A.	

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Name and Position Title/Division	Nationality	U.S. Visa
HAWAIIAN REGENT HOTEL		
ISAACS, Philip, Room Service Manager	U.S.A.	
IZUMOTO, Irene, Director of International Sales	U.S.A.	
KITAGAWA, Jerry, Catering Manager	U.S.A.	
KIYOTA, Etta, Assistant Director of Purchasing	U.S.A.	
LABANG, Kevin, Manager-Cafe Regent/Tiffany	U.S.A.	
LAGONDINO, Charlene, Accounting Manager	U.S.A.	
LEE, Edie, Assistant Manager-Cafe Regent/Tiffany	U.S.A.	
LEE, Wayne, Food & Beverage Director	U.S.A.	
LIILII, Elaine, Executive Housekeeper	U.S.A.	
LIU, Bryan, Assistant Hotel Manager	U.S.A.	
LOCK-DYE, Jun, Sales Manager	U.S.A.	
LUCAS, Glory Ann, Assistant Hotel Manager	U.S.A.	
LYNN, Shirley, Credit Manager	U.S.A.	
MAHELONA, Kent, Chief Steward	U.S.A.	
MANIYA, Alvin, Assistant Chief Engineer	U.S.A.	
MATSUMURA, Lynn, Assistant Reservations Manager	U.S.A.	
MILAN, Marty, Assistant Director of Sales	U.S.A.	
MORIKAWA, George, Super. of Uniformed Services	U.S.A.	
NAGAISHI, Keith, Manager-Gummary	U.S.A.	
NAKASONE, Clyde, Assistant Beverage Manager	U.S.A.	
NAVARRES, Trinidad, Assistant Front Office Manager	U.S.A.	

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Name and Position Title/Division	Nationality	U.S. Visa
HAWAIIAN REGENT HOTEL		
MEDCOMB, Earl, Assistant Banquet Manager	U.S.A.	
OKINAKA, Aaron, Catering Sales Manager	U.S.A.	
PAGATPATAN, Lyle, Assistant Chief Steward	U.S.A.	
PANG, Colette, Group Sales Coordinator	U.S.A.	
PARK, Miki, International Sales Manager	U.S.A.	
PORSCH, Siegfried, Manager-The Secret	Germany	P.R.
RIGG, Sherri, Public Relations Director	U.S.A.	
ROBERTS, Gina, Front Office Manager	U.S.A.	
RULZ, Alex, Assistant Housekeeper	U.S.A.	
SABALLUS, Klaus, Executive Sous Chef	Germany	P.R.
SACKLER, Elliott, General Manager	U.S.A.	
SAHARA, Joan, Reservations Manager	U.S.A.	
SANTOS, Randall, Laundry Manager	U.S.A.	
SATO, Allen, Senior Systems Analyst	U.S.A.	
SHIGETA, Lynette, Staff Planner	U.S.A.	
TADA, Rene, Payroll Manager	U.S.A.	
TAKEKUMA, Clint, Assistant Hotel Manager	U.S.A.	
WONG, Leonor, Assistant Housekeeper	U.S.A.	
WONG, Newton, Sales Manager	U.S.A.	
YAMAMOTO, Roy, Director of Rooms Division	U.S.A.	
YEE, Delilah, Assistant Manager-Summary	U.S.A.	

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Name and Position Title/Division	Nationality	U.S. Visa
HAWAIIAN REGENT HOTEL		
YEE, Harry, Director of Purchasing	U.S.A.	
YEE, Laurie, Asst. Director of Human Resources	U.S.A.	
YOGI, Tina, Assistant Front Office Manager	U.S.A.	
YONOMO, Katheryn, Assistant Credit Manager	U.S.A.	
YOZA, Albert, Controller	U.S.A.	
DROSCH-HALMES, Freddy, Executive Pastry Chef	Belgian	P.R.

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Name and Position Title/Division	Nationality	U.S. Visa
SAUCON VALLEY RESORT		
BROWN, Eddie, Recreation Manager	U.S.A.	
JACKSON, John, General Manager	U.S.A.	
MUNN, Tommy, Maintenance Manager	U.S.A.	

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EXHIBIT "B"

OTAKA, INC.
POLITICAL CONTRIBUTIONS
FOR YEARS 1986 - 1990
****

DATE	NAME OF CANDIDATE	AMOUNT
JANUARY 1986	NORMAN MIZUGUCHI	120.00
FEBRUARY 1986	FRIENDS OF SENATOR SOLOMAN	50.00
MARCH 1986	DENNIS NAKABATO	250.00
MARCH 1986	DONNA IKEDA	100.00
MARCH 1986	GERALD MACHIDA	125.00
MARCH 1986	BOB NAKATA	50.00
APRIL 1986	FRIENDS OF FRED HEMMINGS	60.00
JANUARY 22, 1987	NORMAN MIZUGUCHI	120.00
JANUARY 29, 1987	DENNIS NAKABATO	125.00
FEBRUARY 11, 1987	ARNOLD MORGADO, JR.	125.00
MARCH 06, 1987	JOHN WAIHEE	500.00
MARCH 18, 1987	CLAYTON HEE	100.00
MARCH 18, 1987	FRED HEMMINGS	100.00
MARCH 18, 1987	DONNA IKEDA	100.00
MARCH 23, 1987	DANYE CARPENTER	1,000.00
APRIL 17,1987	WHITNEY ANDERSON	100.00
MAY 20, 1987	TONY KUNIMURA	100.00
MAY 28, 1987	TOM OKAMURA	50.00
JUNE 12, 1987	MILTON HOLT RECEPTION	118.56
JULY 28, 1987	FRANK PASI	500.00
JULY 28, 1987	MARILYN BORNHORST	50.00
AUGUST 18, 1987	FRANK PASI	750.00
SEPTEMBER 02, 1987	GARY GILL	50.00
SEPTEMBER 11, 1987	TAKASHI DOMINGO	1,000.00
OCTOBER 16, 1987	MICHAEL O'KIEFFE	75.00
NOVEMBER 24, 1987	DANYE CARPENTER	500.00
FEBRUARY 06, 1988	DENNIS NAKABATO	250.00
FEBRUARY 09, 1988	DANYE CARPENTER	500.00
FEBRUARY 17, 1988	DONNA IKEDA	100.00
MARCH 04, 1988	RONY CACBOLA	43.88
MARCH 17, 1988	STEPHEN YAMASHIRO	1,000.00
MARCH 17, 1988	MARY-JANE McNURDO	100.00
MARCH 23, 1988	CLAYTON HEE	66.00
MARCH 24, 1988	ROBERT REBERS	100.00
APRIL 06, 1988	ROBERT REBERS	18.15
APRIL 19, 1988	MILTON HOLT	300.00
APRIL 19, 1988	HENRY PETERS	250.00
APRIL 22, 1988	NERLE E. LAI	125.00
MAY 03, 1988	MARILYN BORNHORST	50.00
MAY 04, 1988	DICKIE WONG	1,000.00
MAY 10, 1988	TOM OKAMURA	100.00
MAY 10, 1988	JOHN WAIHEE	250.00
MAY 16, 1988	JOHN WAIHEE	250.00
MAY 24, 1988	PATSY MINK	250.00
JUNE 08, 1988	FRANK PASI	250.00
JUNE 16, 1988	NEIL ABERCROMBIE	50.00
JUNE 21, 1988	RANDY IWASE	400.00
JUNE 23, 1988	FRANK PASI	2,000.00
JUNE 24, 1988	LORRAINE JITCHARU	500.00

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AUGUST 06. 1988	JOHN RADCLIFFE	250.00
JANUARY 31. 1989	FRIENDS OF RANDY IWASE	250.00
JANUARY 31. 1989	FRIENDS OF DANNY KIBANO	500.00
JANUARY 31. 1989	NISHIGUCHI FOR SENATE	100.00
FEBRUARY 09. 1989	AN EVENING WITH MALAMA SOLOMON	50.00
FEBRUARY 16. 1989	FRIENDS OF FRED HIRAYANA	250.00
FEBRUARY 16. 1989	FRIENDS OF DENNIS NAKABATO	250.00
MARCH 02. 1989	FRIENDS OF MILTON HOLT	50.00
MARCH 31. 1989	FRIENDS OF ARNOLD MORGADO	250.00
MAY 16. 1989	FRIENDS OF MARY-JANE McHURDO	250.00
JUNE 29. 1989	CITIZENS FOR WAIHEE	100.00
JANUARY 19. 1990	HENRY PETERS	1,000.00
MAY 14.1990	FRIENDS OF HARRY RUDDLE	1,000.00
MAY 18. 1990	FRIENDS OF JOHN DESOTO	1,000.00
MAY 18. 1990	FRIENDS OF DONNA KIM	1,000.00
MAY 18. 1990	FRIENDS OF RENE MANSBO	1,000.00
MAY 18. 1990	FRIENDS OF ARNOLD MORGADO	1,000.00
MAY 18. 1990	CITIZENS FOR WAIHEE	1,000.00

		$23,645.33
		==========

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

RESPONDENT GROSVENOR INTERNATIONAL (HAWAII) LIMITED'S RESPONSE TO INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

In response to the Federal Election Commission's request for response to Interrogatories and Request for Production of Documents, Respondent GROSVENOR INTERNATIONAL (HAWAII) LIMITED, by and through its designated counsel, Russell S. Kato, Esq., hereby responds as follows:

1. State your name, local address, business, and where you are incorporated.

   Grosvenor International (Hawaii) Limited
   733 Bishop Street, Suite 2500
   Honolulu, Hawaii 96813
   Real Estate Developer
   Incorporated under the laws of the State of Hawaii

2. Identify all officers and directors.

   See Exhibit A attached hereto.

3. Identify all management personnel.

   See Exhibit B attached hereto.

4. State whether you are a subsidiary of any entity. If so, identify all entities with ownership rights.

   Grosvenor International (Hawaii) Limited is a wholly-owned subsidiary of Grosvenor International (U.S.A.) Limited, a Nevada corporation.

5. List all contributions (date, amount, recipient) made by you to federal, state and local elections. List all refunds made of such contributions, and the date

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of the refund. State whether you are required to file reports with any state election board.

	Date	Amount	Recipient	Refund
(a)	8/25/87	$500.00	Friends of Fasi	No
(b)	5/10/89	50.00	Gary Gill Cares Committee	No

No, we are not required to file reports with any state election board.

6. Identify all persons who participated in the making of each contribution noted above. If these persons are not noted in your answer to interrogatories one or two, identify such persons.

   5(a) - Lawrence K. Fukunaga and Richard A. Wright

   5(b) - Richard A. Wright

   All of the above persons are U.S. citizens.

7. State the source of funds used to make the contributions noted above and whether any funds were provided directly or indirectly by a foreign national.

   The funds used for the contributions were from income generated solely by Grosvenor International (Hawaii) Limited from its Hawaii/U.S. operations. No funds were provided directly or indirectly by a foreign national.

8. State whether you maintain a political action committee. If so, specify the source of the funds used by such committee. Identify all persons associated with the operation of such political action committee.

   No.

9. If your answer to the above interrogatory is in the negative, state whether you maintain a pool of funds specified for election activity. If so, identify the procedure under which such pool was established, state how it is currently operated, and identify those persons who determine under which circumstances funds are available for the pool.

   No.

10. Identify each person answering these questions, the length of time that he or she has been associated with the respondent, and all positions held with the respondent.

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(a) Richard A. Wright
(See information above)
Development Manager; Vice President and President/Director
Associated with the respondent for 17 years and 5 months.

(b) Clytie Y. Kaneshiro
(See information above)
Accountant; Secretary/Treasurer; Treasurer
Associated with the respondent for 10 years and 11 months.

(c) Russell S. Kato
Attorney for Grosvenor International (Hawaii) Limited
Goodsill Anderson Quinn & Stifel
1600 Bancorp Tower
130 Merchant Street
Honolulu, Hawaii 96813
(808)547-5600

The foregoing responses are true to the best of my knowledge and belief.

Russell S. Kato

RUSSELL S. KATO
Attorney for
Grosvenor International
(Hawaii) Limited

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS - ITEM 2.

Full Name	Most Recent Business Address	Most Recent Residence Address	Most Recent Telephone No.	Present Occupation/ Position	Nationality	U.S. Citizen or Permanent Resident Alien of U.S.
1986:						
Neville E. Gibson	(see below)	(see below)	(see below)	Chairman/Director	(see below)	(see below)
Daryl J.A. Delmotte	"	"	"	Vice Chairman/Director	"	"
David A. Fitzgerald	"	"	"	Vice Chairman/Director	"	"
Richard A. Wright	"	"	"	President/Director	"	"
Diane E. Sanders (aka Tap)	"	"	"	Secretary	"	"
Clytie Y. Kameshiro				Treasurer		
1987:						
Neville E. Gibson	(see below)	(see below)	(see below)	Chairman/Director	(see below)	(see below)
Daryl J.A. Delmotte	"	"	"	Vice Chairman/Director	"	"
David A. Fitzgerald	"	"	"	Vice Chairman/Director	"	"
Richard A. Wright	"	"	"	President/Director	"	"
Diane E. Sanders (aka Tap)	"	"	"	Secretary	"	"
Wanda S. Sheldon	"	"	"	Assistant Secretary	"	"
Clytie Y. Kameshiro	"	"	"	Treasurer	"	"
1988:						
Neville E. Gibson	1040 West Georgia Street, 21st Floor Vancouver, B.C. V6E 4H1 (604) 683-1141	2730 Hibbens Close Victoria, B.C. V8R 3J7	(604) 595-3017	Retired, Director of Grow, Inc.'s Holdings (Retired Chairman/Director to 12/31/88)	Canadian National	Canadian Citizen
Daryl J.A. Delmotte	(see below)	(see below)	(see below)	Vice Chairman/Director	(see below)	(see below)
David A. Fitzgerald	"	"	"	Vice Chairman/Director	"	"
Richard A. Wright	"	"	"	President/Director	"	"
Diane E. Tap (formerly Sanders)			"	Secretary	"	"
Wanda S. Sheldon	100 Pine Street Suite 2000 San Francisco, CA 94111 (415) 434-0175	73 Bailey Downs Hercules, CA 94547	(415) 724-1146	Secretary to R.W. Hayward, Secretary of California Companies and Asst. Sec. of Grow, Inc. (U.S.A.) (Asst. Secretary to 12/31/88)	U.S. National	U.S. Citizen
Clytie Y. Kameshiro	(see below)	(see below)	(see below)	Treasurer	(see below)	(see below)

EXHIBIT A

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS - ITEM 2.

Full Name	Most Recent Business Address	Most Recent Residency Address	Most Recent Telephone No.	Present Occupation/ Position	Nationality	U.S. Citizen or Permanent Resident Alien of U.S.
1989:						
Daryl J.A. Delmotte	(see below)	(see below)	(see below)	Chairman/Director	(see below)	(see below)
David A. Fitzgerald	"	"	"	Vice Chairman/Director	"	"
David A. Taylor	"	"	"	Vice Chairman/Director	"	"
Ralph W. Hayward	"	"	"	Director	"	"
John M. Canterbury	"	"	"	Director	"	"
Richard A. Wright	"	"	"	President/Director	"	"
Laura L. Schmidt	"	"	"	Vice Pres.-Asset Mgmt.	"	"
Diane E. Tap	711 Bishop Street Suite 1717 Honolulu, HI 96813 (808) 537-6132	1255 W. Sandtrap Way Tucson, Arizona 85737	(602) 297-3016	Retired (Secretary to 4/89)	U.S. national	U.S. Citizen
Jeanette M. Ishibashi (Lytle T. Kaneshiro	(see below) "	(see below) "	(see below) "	Secretary (from 8/89) Treasurer (Secretary/Treas. 4/89-7/89)	(see below) "	(see below) "
1990:						
Daryl J.A. Delmotte	1040 West Georgia Street, 21st Floor Vancouver, B.C. V6E 4H1 (604) 683-1141	240 Sandringham Crescent North Vancouver, B.C. V7N 2H6	(604) 980-1044	Chairman/Director	U.K. national	U.K. Citizen
David A. Fitzgerald	1040 West Georgia Street, 21st Floor Vancouver, B.C. V6E 4H1 (604) 683-1141	3930 Marine Drive West Vancouver, B.C. V7V 1N4	(604) 926-2038	Vice Chairman/Director	U.K. national	U.K. Citizen
David A. Taylor	1040 West Georgia Street, 21st Floor Vancouver, B.C. V6E 4H1 (604) 683-1141	3978 West 37th Avenue Vancouver, B.C. V6N 2W5	(604) 263-8050	Vice Chairman/Director	Canadian national	Canadian Citizen
Ralph W. Hayward	101 Pine Street Suite 3200 San Francisco, CA 94111 (415) 434-0175	171 Avenida Mira Flores Tiburon, CA 94920	(415) 435-2401	Director	U.K. national	Permanent res dent alien of U.S. (U.K. Citizen)
John M. Canterbury	1040 West Georgia Street, 21st Floor Vancouver, B.C. V6E 4H1 (604) 683-1141	4338 Pine Crescent Vancouver, B.C. V6J 4L1	(604) 731-4384	Director	U.K. national	U.K. Citizen

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS - ITEM 2.

Full Name	Most Recent Business Address	Most Recent Residence Address	Most Recent Telephone No.	Present Occupation/ Position	Nationality	U.S. Citizen or Permanent Resident Alien of U.S.
ITEM - Continued:						
Richard A. Wright	711 Bishop Street Suite 2500 Honolulu, HI 96813 (808) 537-6137	7173 Hawaii Kai Drive Honolulu, HI 96825	(808) 395-1871	President/Director	U.S. national	U.S. Citizen
Laura L. Schmidt	711 Bishop Street Suite 2500 Honolulu, HI 96813 (808) 537-6137	506 North Kalaheo Street Kailua, HI 96734	(808) 262-6230	Vice Pres.-Asset Mgmt.	U.S. national	U.S. Citizen
Jeanette M. Ishihara	AMFAC/JMB HAWAII INC. 700 Bishop Street Honolulu, HI 96813 (808) 985-8277	1350 Ala Moana Blvd., #7003 Honolulu, HI 96814	(808) 521-3168	Secretary to Pres. of Amfac/JMB (Secretary to 4/90; terminated employment)	U.S. national	U.S. Citizen
Clytie Y. Kaneshiro	711 Bishop Street Suite 2500 Honolulu, HI 96813 (808) 537-6137	2033 Nuuanu Avenue #23C Honolulu, HI 96817	(808) 533-4779	Secretary/Treasurer (from 4/19/90; Treasurer to 4/18/90)	U.S. national	U.S. Citizen

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS - ITEM 3.
(In Addition to Those Listed in Item 2)

Full Name	Most Recent Business Address	Most Recent Residence Address	Most Recent Telephone No.	Present Occupation/ Position	Nationality	U.S. Citizen or Permanent Resident Alien of U.S.
1986:						
Delmar L. Hesch	(see below)	(see below)	(see below)	Property Manager	(see below)	(see below)
Ronald Y.K. Lee	*	*	*	Development Manager	*	*
Laura L. Schmidt	(See Response to Item 2)	(See Response to Item 2)	(See Response to Item 2)	Property Manager	(See Response to Item 2)	(See Response to Item 2)
1987:						
Lawrence K. Fukunaga	(see below)	(see below)	(see below)	Development Manager (from 6/8/87)	(see below)	(see below)
Delmar L. Hesch	*	*	*	Property Manager	*	*
Ronald Y.K. Lee	Unknown	608-A North Judd Street Honolulu, HI 96817	(808) 531-8931	Unknown (Development Manager to 1/31/87)	U.S. national	U.S. Citi[illegible]
Laura L. Schmidt	(See Response to Item 2)	(See Response to Item 2)	(See Response to Item 2)	Property Manager	(See Response to Item 2)	(See Response to Item 2)
1988:						
Lawrence K. Fukunaga	(see below)	(see below)	(see below)	Development Manager	(see below)	(see below)
Delmar L. Hesch	*	*	*	Property Manager	*	*
Laura L. Schmidt	(See Response to Item 2)	(See Response to Item 2)	(See Item 2)	Property Manager (See Item 2)	(See Item 2)	(See Item 2)
1989:						
Lawrence K. Fukunaga	(see below)	(see below)	(see below)	Development Manager	(see below)	(see below)
Delmar L. Hesch	*	*	*	Property Manager	*	*
David B. Irwin	Grosvenor Int'l Calif, Ltd. 100 Pine Street Suite 3200 San Francisco, CA 94111 (415) 434-0175	2211 Stockton #410 San Francisco, CA 94133	(415) 398-5105	Development Manager (Asst. Development Mgr. 1/1/89-12/31/89 in Hawaii, transferred to California 1/1/90)	U.S. national	U.S. Citizen

EXHIBIT B

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS - ITEM 3.
(In Addition to Those Listed in Item 2)

Full Name	Most Recent Business Address	Most Recent Residence Address	Most Recent Telephone No.	Present Occupation/ Position	Nationality	U.S. Citizen or Permanent Resident Alien of U.S.
1990:						
Sandra K. Baade	733 Bishop Street Suite 2900 Honolulu, HI 96813 (808) 537-6132	2019 Puna Street Honolulu, HI 96817	(808) 595-7467	Office Manager (from 5/1/90)	U.S. national	U.S. Citizen
Lawrence K. Fukunaga	733 Bishop Street Suite 2900 Honolulu, HI 96813 (808) 537-6132	854 Papalalo Place Honolulu, HI 96825	(808) 396-0098	Development Manager	U.S. national	U.S. Citizen
Delmar L. Mesch	733 Bishop Street Suite 2900 Honolulu, HI 96813 (808) 537-6132	1206 Puloaloha Street Pearl City, HI 96782	(808) 455-8117	Property Manager	U.S. national	U.S. Citizen

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CARL TOM
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PAULA W. CHONG
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OF COUNSEL:
GEORGE T. OKAMURA

July 23, 1990

90 JUL 26 AM 11:41

HAND DELIVERED

VIA FEDERAL EXPRESS

Lee Ann Elliott, Chairman
Lawrence M. Noble, General Counsel
Michael Troy, Staff Member
Federal Election Commission
Washington D.C. 20463

RE: MUR 2892 Citizens for Waihee

Dear Messrs. and Mesdames:

Further to my letter to you dated July 11, 1990, enclosed please find the Statement of Designation of Counsel executed by William Paty, Committee Chairman.

Should you have any questions with regard to this matter, please contact the undersigned at (808) 526-3011.

Sincerely,

Renton L. K. Nip

Renton L. K. Nip

RLKN:aa
enclosure

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 2892

NAME OF COUNSEL: Renton L. K. Nip

ADDRESS: Suite 2700, Mauka Tower
737 Bishop Street
Honolulu, HI 96813

TELEPHONE: (808) 526-3011

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

7/20/90
Date

Signature

RESPONDENT'S NAME: William Paty, Committee Chairman, Citizens for Waihee

ADDRESS: 925 Dillingham Boulevard
Honolulu, HI 96817

HOME PHONE:

BUSINESS PHONE: (808) 832-2800

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PENELOPE W. SALTZMAN
JOHN BYRON SANDAGE
JUDITH S. SAPIR
KAREN E. SCHIFFER
DEREK S. SELLS
JANE C. SHERBURNE
BRIAN E. SLONE*
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THOMAS W. SWEGLE*
PETER A. VON MEHREN
RICHARD L. A. WEINER
SUSAN G. WILLIAMS*
CARL WILLNER
AMY C. WINTERER*
NEAL S. WOLIN
ROGER W. YOERGES*
STEPHEN S. ZIMMERMANN

July 25, 1990

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUL 25 AM 9:28

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BY HAND DELIVERY

Lawrence M. Noble, Esq.
General Counsel
Jonathan Bernstein, Esq.
Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20004

Re: MUR 2892

Dear Sirs:

We write on behalf of our client, the Coordination Council for North American Affairs, in response to your letter to Mr. Stephen S. F. Chen of June 13 concerning the above-captioned matter. Nothing in this letter or any related discussions constitutes a submission to, or waiver of immunity from, the jurisdiction of the Federal Election Commission, the U.S. courts or any other tribunal or agency.

As you know, the Coordination Council for North American Affairs ("CCNAA") is the recognized instrumentality representing Taiwan (the Republic of China) in this country. This matter therefore presents the unusual situation in which an agency of the U.S. government must consider the extent to which it should or can assert jurisdiction over a foreign sovereign with respect to allegations of campaign contributions. It is the firm position of the CCNAA that it is immune in this case from both administrative proceedings before the Federal Election Commission ("FEC") and from any judicial proceedings that the FEC might seek to bring to enforce a Commission order. We set out below why U.S. law and policy fully support the ROC's position.

At the same time, we have been authorized to represent that it is contrary to CCNAA policy for any CCNAA employees to make political contributions of any sort to U.S. federal, state, or local elections and that it knows of no instance other than the one at issue here in which such a payment has been made. Rather than prolong this proceeding and anticipate difficult jurisdictional questions needlessly, we respectfully request that the Commission give its staff authority to negotiate a pre-probable cause conciliation agreement along the lines set out below. We submit that this approach will best preserve the U.S. government's interest in effectively policing campaign

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contributions by foreign nationals while at the same time preserving the CCNAA's claims to sovereign immunity in this case.

I. The ROC's Sovereign Immunity

The ROC is a foreign sovereign nation fully entitled to all of the immunities, rights, and privileges normally accorded foreign sovereigns under U.S. law. Accordingly, recognized instrumentalities of the ROC are immune from both administrative proceedings initiated by the FEC and from any judicial proceedings that might follow under well-established U.S. doctrines of sovereign immunity.

A. The CCNAA Is an Immune Instrumentality of a Foreign Sovereign

The CCNAA is the recognized instrumentality that acts in the United States on behalf of Taiwan (the Republic of China). Pursuant to statute, executive order, and other instruments, the government of the United States accords to the CCNAA the privileges and immunities that are enjoyed by a foreign state, as well as those enjoyed by public international organizations.[1]

The Taiwan Relations Act, 22 U.S.C. § 3301 et seq., provides that "[w]henever the laws of the United States refer or relate to

[1] For a general discussion of the juridical status of the CCNAA, see Millen Industries, Inc. v. Coordination Council for North American Affairs, 855 F.2d 879, 883-84 & n.5 (D.C. Cir. 1988).

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foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan." 22 U.S.C. § 3303(b)(1). The Act defines "Taiwan" to include agencies and instrumentalities of the governing authorities on Taiwan. 22 U.S.C. § 3314. Further, the Act provides that all communications and other actions of the United States government relating to Taiwan shall be rendered to or accepted from "an instrumentality established by Taiwan which the President determines has the necessary authority under the laws applied by the people on Taiwan to provide assurances and take other actions on behalf of Taiwan in accordance with this Act." 22 U.S.C. § 3309(a). Subject to reciprocity on the part of Taiwan, the President is authorized "to extend with respect to the Taiwan instrumentality and its appropriate personnel, such privileges and immunities (subject to appropriate conditions and obligations) as may be necessary for the effective performance of their functions." 22 U.S.C. § 3309(c).

In Executive Order 12143, § 1-204, June 22, 1979, the President of the United States ordered that "the Coordination Council for North American Affairs is determined to be the unofficial instrumentality established by the people on Taiwan having the necessary authority under the laws applied by the people on Taiwan to provide assurances and take other actions on

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behalf of Taiwan in accordance with the Act." 44 Fed. Reg. 37191, 37192 (1979).

Accordingly, the CCNAA is entitled to all of the immunities codified in the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. § 1601 to 1611 ("FSIA"). As the United States Court of Appeals for the District of Columbia Circuit recently held, "the CCNAA for purposes of this action, rather than being a subject or citizen of Taiwan, is Taiwan. . . . CCNAA enjoys the same immunity under the FSIA as do other nations." Millen Industries, Inc. v. Coordination Council for North American Affairs, 855 F.2d 879, 883 (D.C. Cir. 1988).

Indeed, according to the court of appeals, "arguments exist for an immunity under the International Organizations Immunities Act, [citations omitted], exceeding that offered under the FSIA." Millen Industries, 855 F.2d at 883-84 n.5 (emphasis added). Thus, the October 2, 1980 agreement between the U.S. and the CCNAA provides: "In order that it may effectively perform its functions, each sending counterpart organization shall enjoy in the territory in which the receiving counterpart organization is located, immunity from suit and legal processes equivalent to those enjoyed by public international organizations in the United States." Article 6(b); see Millen Industries, 855 F.2d at 883 n.5. The agreement specifically provides that, absent waiver of

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immunity by the organization, "[d]esignated employees of each sending counterpart organization shall be immune from suit and legal processes relating to acts performed by them within the scope of their authorized functions." Article 5(e). As discussed below at p. 17, there is good reason to conclude that the International Organizations Immunities Act, 22 U.S.C. §§ 288 to 288i, gives international organizations such as the CCNAA immunity in situations where the FSIA would not.

B. The CCNAA Is Immune from Administrative Proceedings

At a minimum, the CCNAA is immune under the FSIA from suit and other legal processes in the United States, except in specified circumstances that do not exist in this case. The doctrine of sovereign immunity in the United States dates back to the early days of the Republic. In his seminal description of the doctrine and its basis, Chief Justice Marshall said:

> One sovereign being in no respect amenable to another; and being bound by obligations of the highest character not to degrade the dignity of his nation, by placing himself or its sovereign rights within the jurisdiction of another, can be supposed to enter a foreign territory [only] . . . in the confidence that the immunities belonging to his independent sovereign station, though not expressly stipulated, are reserved by implication.

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The Schooner Exchange v. McFaddon, 11 U.S. (7 Cranch) 116, 137 (1812).

Congress has codified the sovereign immunity doctrine in the FSIA. Under the FSIA, foreign sovereigns such as the CCNAA are given general immunity from legal proceedings within the United States, subject to the exceptions set out in § 1605(a). These exceptions include situations where the foreign sovereign has waived its immunity (either explicitly or by implication), where the legal action is based on commercial activity having a connection to the United States, or where the foreign state is being sued for a non-commercial tort occurring within the United States. See 28 U.S.C. § 1605(a)(1), (2) & (5).

Although the literal terms of the FSIA refer to sovereign immunity from only federal and state judicial proceedings, other federal agencies have properly felt compelled to obey the FSIA's principles with respect to administrative proceedings as well. This is because the FSIA represents Congress' considered, contemporary appraisal of the proper balance to be struck in U.S. legal proceedings between the interests in holding foreign states accountable for certain commercial and other actions, on the one hand, and U.S. foreign relations and other interests in treating foreign sovereigns with due respect and deference, on the other

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hand.[7] In enacting the FSIA, Congress focussed specifically on the potential for affront to foreign sovereigns in haling them to appear and answer before federal or state courts.[8]

Given the reasons underlying the balance struck by Congress in the FSIA and their powerful application to U.S. administrative proceedings, it should not be surprising that the federal agency most often addressing the question of sovereign immunity -- the National Labor Relations Board -- has concluded that it should follow FSIA precepts in asserting its own jurisdiction over entities owned by foreign governments. Thus, in State Bank of India, [1977-78] NLRB Dec. (CCH) ¶ 18,185 (1977), the Board considered whether and to what extent it should assert jurisdiction over a separate corporation owned by the government of India. Although the Board concluded that, read literally, the National Labor Relations Act would permit it to exercise plenary jurisdiction without regard to the ownership of the employer, the

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[7] See Hill, A Policy Analysis of the American Law of Foreign State Immunity, 50 Fordham L. Rev. 155, 172 (1981); Marasinghe, A Reassessment of Sovereign Immunity, 9 Ottawa L. Rev. 474, 479-80 (1977). See also Verlinden B.V. v. Central Bank of Nigeria, 461 U.S. 480, 488-89 (1983); H.R. Rep. No. 1487, 94th Cong., 2d Sess. 6-9 (1976); Jurisdiction of U.S. Courts in Suits Against Foreign States: Hearings on H.R. 11315 Before the Subcomm. on Administrative Law and Governmental Relations of the House Comm. on the Judiciary, 94th Cong., 2d Sess. 25 (1976) (Testimony of Monroe Leigh); id. at 31 (Testimony of Bruno A. Ristau). Cf. Alfred Dunhill of London, Inc. v. Cuba, 425 U.S. 682, 702-05 (1976).

[8] See Hearings on H.R. 11315 at 27 (Testimony of Monroe Leigh); id. at 88 (Testimony of J. Roderick Heller).

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Board went on to decide that it would exercise such jurisdiction only to the extent such exercise would be consistent with the provisions of the FSIA, were the proceeding to be brought in federal court. The National Labor Relations Board subsequently reaffirmed this borrowing from the FSIA in Goethe House, [1987-88] NLRB Dec. (CCH) ¶ 19,345 (1988).[4]

Second, the EEOC has reached the same conclusion as the National Labor Relations Board for a somewhat different reason that is equally applicable here. In Decision No. 85-11, Equal Employment Opportunity Commission, 38 F.E.P. Cas. 1876 (July 16, 1985), the Commission determined that it should follow the precepts of the FSIA because any enforcement action that it might ultimately take against the foreign state respondent would require assertion of federal court jurisdiction -- which, in turn, would be possible only insofar as the FSIA permitted it. Similarly, in the present case the Federal Election Commission should consider not only Congress' express statutory balance of interests in the FSIA, but also congressional restrictions on

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[4] In both Bank of India and Goethe House, the Board ultimately determined that it could assert jurisdiction over the instrumentalities of foreign states involved in those cases. This was based -- not on any different approach from that set forth in the FSIA -- but rather on the conclusion that the employment practices at issue in those cases were "commercial" within the meaning of FSIA § 1605(a)(2) based on express language in the legislative history of the FSIA concerning employment relationships. See Bank of India at 30,179; Goethe House at 33,444.

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federal court enforcement of FEC orders that would apply if the Commission ultimately ruled against the ROC.

There is nothing in the Federal Election Campaign Act that would support the Commission's departing from the approach taken by other federal agencies to questions of foreign sovereign immunity. To be sure, the Act specifically includes within the definition of "foreign national" a "government of a foreign country." 2 U.S.C. § 441e(b)(1) (referring to 22 U.S.C. § 611(b)). But nothing in the legislative history of the Act suggests that Congress intended to work a fundamental change in foreign sovereign immunities law as it existed when § 441e was enacted in early 1976. Nor is there any reason to suspect that Congress intended for the language of § 441e to carve out a significant exception to the language of the FSIA --which Congress did not even enact until several months after § 441e became law. In the analogous situation presented to the Supreme Court recently in Argentine Republic v. Amerada Hess Shipping Corp., 109 S. Ct. 683 (1989), the Court flatly rejected a claim that the express jurisdictional provisions of the Alien Tort Statute represented an implicit exception to the later-enacted FSIA.

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> In light of the comprehensiveness of the statutory scheme in the FSIA, we doubt that even the most meticulous draftsman would have concluded that Congress also needed to amend pro tanto the Alien Tort Statute and presumably such other grants of subject-matter jurisdiction in Title 28 as § 1331 (federal question), § 1333 (admiralty), § 1335 (interpleader), § 1337 (commerce and antitrust), and § 1338 (patents, copyrights, and trademarks). Congress provided in § 1602 of the FSIA that "[c]laims of foreign states to immunity should henceforth be decided by courts of the United States in conformity with the principles set forth in this chapter," and very likely it thought that should be sufficient. § 1602 (emphasis added); see also H.R. Rep., at 12, S. Rep., at 11, U.S. Code Cong. & Admin. News 1976, p. 6610 (FSIA "intended to preempt any other State and Federal law (excluding applicable international agreements) for according immunity to foreign sovereigns").

109 S. Ct. at 689. Moreover, interpreting § 441e so as to remove all immunity for foreign sovereigns from U.S. administrative and judicial jurisdiction and subject such sovereigns to civil penalties would be flatly contrary to general principles of international law.[y] United States courts have held that U.S.

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[y] See United Kingdom State Immunity Act, 26 & 27 Eliz. 2, ch. 33, reprinted in 17 Int'l Leg. Mat. 1123 (1978); Canadian State Immunity Act, 29-30-31 Eliz. ch. 95, reprinted in 21 Int'l Leg. Mat. 798 (1982); Australian Foreign State Immunity Act 1985, reprinted in 25 Int'l Leg. Mat. 715; Pakistani, Singapore, and South African Acts, Materials on Jurisdictional Immunities of States and Their Property, U.N. Leg. Ser. Doc. ST/LEG/SER.B/20 (1982). See also European Convention On State Immunity and Additional Protocol 1972, 74 ETS 1, reprinted in 11 Int'l Leg. Mat. 470 (1972); Draft International Law Commission Convention On Jurisdictional Immunities of States, Report of the International

(Footnote continued on following page)

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law will not be held to violate public international law in the absence of a very specific demonstration of congressional intent far beyond anything applicable to § 441e.[9]

Applying the principles of the FSIA to the present case, there is no basis for the Commission to assert jurisdiction over the CCNAA with respect to this dispute. The CCNAA has not waived and does not intend to waive its sovereign immunity, explicitly or by implication, with respect to any alleged campaign contributions made by its employees. 28 U.S.C. § 1605(a)(1). Nor does the alleged activity relate to "rights in property taken in violation of international law," 28 U.S.C. § 1605(a)(3); or to "rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States," 28 U.S.C. § 1605(a)(4). Further, litigation relating to MUR 2892 would not seek "money damages . . . for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that

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[9](Footnote continued from preceding page)
Law Commission on Work of Its Thirty-Eighth Session, 41 UN GAOE Supp. (No. 10), UN Doc. A/41/10 (1986). Similar to the FSIA, all these documents have adopted the general rule of sovereign immunity subject to certain exceptions.

[9] See CFTC v. Nahas, 738 F.2d 487, 495 (D.C. Cir. 1984); FTC v. Compagnie de Saint-Gobain-Pont-A-Mousson, 636 F.2d 1300, 1323 & n.130 (D.C. Cir. 1980).

foreign state or of any official or employee of that foreign state," 28 U.S.C. § 1605(a)(5).

From informal discussions with the FEC staff, we understand that it may be considering whether the alleged contributions constituted a "commercial activity carried on in the United States by the foreign state." 28 U.S.C. § 1605(a)(2). We respectfully urge you to reject this possibility.

No court has ever interpreted the "commercial activity" exception of the FSIA to apply to anything remotely similar to contributions. Moreover, as a matter of logic and common usage, a campaign contribution cannot be considered to be "commercial." The word "commercial" is defined as: engaging in commerce, i.e., the exchange of goods or commodities on a large scale between different countries or between different parts of the country; acting with the sole emphasis on salability, profit or success; and being able to yield or make a profit. Random House Dictionary 441 (2d ed. 1987). In enacting § 1605(a)(2), Congress gave the following examples of activities that should be considered "commercial" for purposes of the statute:

> Activities such as a foreign government's sale of a service or a product, its leasing of property, its borrowing of money, its employment or engagement of laborers, clerical staff or public relations or marketing agents, or its investment in a security of an American corporation, would be among those included within the definition.

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H.R. Rep. No. 1487, 94th Cong., 2d Sess. 16 (1976). At no point did Congress suggest that in using "commercial" in § 1605(a)(2) it was intending to expand substantially beyond what is customarily considered to be commercial activity.

That campaign contributions are the sort of activity engaged in by private persons does not make them "commercial." It is true, to be sure, that the FSIA's legislative history contains references suggesting that Congress looked to whether the particular activity could by its nature be undertaken by private parties -- but this was only to distinguish which contracts should be considered commercial and which would not.[7] Congress also looked to other factors, such as "profit-making" motive, to determine the question of "commercial activity."[8] Thus, being an activity that could be undertaken by a private person is only a necessary, but not sufficient, condition of being commercial -- a point recognized by courts applying the FSIA.

For example, in In re Sedco, Inc., 543 F. Supp. 561, 565 (S.D. Tex. 1982), the court held the drilling of an exploratory

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[7] See H.R. Rep. No. 1487 at 16 ("a single contract, if of the same character as a contract which might be made by a private person, could constitute a 'particular transaction or act'" within the meaning of § 1605(a)(2).).

[8] See id. ("[I]f an activity is customarily carried on for profit, its commercial nature could readily be assumed.").

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oil well in the Gulf of Mexico to be non-commercial, saying that "not. . .every act done by a foreign state which could be done by a private citizen in the United States is 'commercial activity' under § 1605(a)(2)." Similarly, in Letelier v. Republic of Chile, 748 F.2d 790 (2d Cir. 1984), the Second Circuit explicitly rejected the lower court's conclusion that the Chilean national airline's participation in an assassination was commercial activity under the "private person" test. The court held that not every act of a foreign state that could be done by a private citizen in the United States is "commercial activity" and that the "court must inquire whether activity is of a type an individual would customarily carry on for profit." Id. at 791.[9] Indeed to read the FSIA otherwise would make certain of the exceptions to immunity provided in § 1605(a)(5) redundant; for example, if any private act was automatically "commercial," the explicit removal of immunity with respect to "non-commercial torts" in § 1606(a)(5) would make no sense.

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[9] Accord, Gregorian v. Investia, 871 F.2d 1515 (9th Cir.), cert. denied, 110 S. Ct. 237 (1989) (publication of libelous statements in government-owned newspaper immune); MacArthur Area Citizens Ass'n v. Republic of Peru, 809 F.2d 918 (D.C. Cir.), vacated in part, 823 F.2d 606 (1987) (remodeling and operation of a chancery building is not a commercial act); MOL, Inc. v. Peoples Republic of Bangladesh, 736 F.2d 1326 (9th Cir.), cert. denied, 469 U.S. 1037 (1984) (sale of rhesus monkeys immune); Yessenin-Volpin v. Novosti Press Agency, 443 F. Supp. 849 (S.D.N.Y. 1978) (publication of libelous articles in government-owned newspaper immune).

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Even were the Commission to persuade a federal court that -- contrary to the plain meaning of the FSIA and the arguments presented above -- political contributions are "commercial," the Commission would still be precluded from obtaining the penalties provided for under the FECA. Such penalties would violate the FSIA's express provision prohibiting federal and state courts from assessing punitive damages against a foreign sovereign. 28 U.S.C. § 1606.[10] The FECA itself terms the potential fine a "civil penalty." 2 U.S.C. § 437g(a)(5)(A), (B).[11] The Supreme Court has stated that, "the remedy of civil penalties is similar to the remedy of punitive damages," Tull v. United States, 481 U.S. 412, 422 n.7 (1987), and has noted that, "a civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can be explained only as also serving either retributive or deterrent purposes, is punishment, as we have come to understand the term." United States v. Halper, 109 S. Ct. 1892, 1902 (1989).[12] Hence the civil penalty under FECA is punitive and is precluded by the FSIA's bar against punitive damages.

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[10] This prohibition is in keeping with customary international practice. See H.R. Rep. No. 1487 at 22.

[11] See Black's Law Dictionary 1020 (5th ed. 1979) ("A penalty is a sum of money which the law exacts payment of by way of punishment for doing some act which is prohibited. . . .").

[12] See also, 36 Am. Jur. 2d Forfeitures and Penalties § 2 ("Penalty").

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Finally, the immunities given to the CCNAA under the International Organizations Immunities Act, 22 U.S.C. §§ 228 to 228i, as described above at p. 6, provide an independent bar to this proceeding regardless whether a political contribution can properly be characterized as "commercial." As the D.C. Circuit has explained, there are powerful reasons for construing the IOIA not to except commercial activities from the scope of immunity given to international organizations.[17] Most important, the IOIA grants international organizations "the same immunity enjoyed by foreign governments" but was enacted in 1945, at which time foreign governments enjoyed absolute immunity in the United States.[18] Moreover, the legislative history of the IOIA plainly shows Congress' intent that, insofar as immunity was to be eliminated with respect to commercial activities of international organizations, it was to be done by order of the President in individual cases--not by a general statutory limitation.[19] Accordingly, were the Commission to determine that political contributions were commercial, it nevertheless could not proceed

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[17] See, Broadbent v. Organization of American States, 628 F.2d 27, 31-2 (D.C. Cir. 1980).

[18] Id. at 31.

[19] Id. at 32 (quoting S. Rep. No. 861, 79th Cong., 1st Sess. 2 (1945)).

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against the CCNAA in this case consistent with the principles of the IOIA.

II. Proposed Conciliation

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Sincerely,

Daniel K. Mayers
David Westin

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 30, 1990

Mr. Mervyn Kotake
Matsubara, Lee, & Kotake
888 Mililani Street, 8th Floor
Honolulu, Hawaii 96813-2918

Re: MUR 2892
Hiroshi Kobayashi

Dear Mr. Kotake:

This letter is to confirm your phone conversation on July 24, 1990 with Michael Troy of this Office.

In an earlier phone conversation on June 25, 1990, Mr. Troy told you that an affidavit stating that Hiroshi Kobayashi was a resident alien when he made the alleged contributions would be a sufficient response to the interrogatories sent to you on May 21, 1990. While we received your response dated July 2, 1990, this Office requires more information before it can make a recommendation to the Commission regarding Mr. Kobayashi.

In your phone conversation with Mr. Troy on July 24, 1990, you were informed that the Commission would require full and complete answers to the interrogatories sent to you on May 21, 1990. This would include a list of the contributions made by Mr. Kobayashi, the source of the funds used to make the contributions, including any reimbursement of the contributions by another, and the identification of any other person who participated in the decision to make each contribution.

This is also to confirm that you have an additional two weeks to comply with that request. Accordingly, your response is due by the close of business on August 7, 1990.

I apologize for any confusion this Office may have caused you in this matter, and I look forward to receiving your response.

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If you have any further questions regarding this matter please contact Michael Troy at (202)376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

9404357340 8

OGC 7207

TANIGAWA & TANIGAWA
Attorneys at Law
Suite 1550 Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813

Herbert H. Tanigawa
Michael K. Tanigawa

Telephone
(808) 521-8354
Fax
(808) 531-8263

90 AUG -6 AM 10: 31

August 1, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
90 AUG -6 PM 12: 53

Michael Troy, Esq.
General Counsel's Office
Federal Election Commission
999 E.Street, NW
Washington, D.C. 20463

Re: MUR # 2892, Masao Hayashi

Dear Mr. Troy:

Pursuant to our conversation of August 1, 1990, I am enclosing a copy of our response to MUR # 3004. As you can see by the affidavit of Mr. Hayashi, the facts detailed in the response to the complaint, and the attached exhibit, Mr. Hayashi did not make the personal contribution alleged by the complaint under MUR # 3004.

If there is any further information I can send you in order to facilitate the disposition of this matter, please do not hesitate to call me.

Sincerely,

Michael K. Tanigawa

MICHAEL K. TANIGAWA

encl.

90043573439

06047206

TANIGAWA & TANIGAWA
Attorneys at Law
Suite 1550 Pacific Tower
1001 Bishop Street
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Herbert H. Tanigawa
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December 1, 1989

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 AUG -6 PM 1:26

Mark Allen, Esq.
General Counsel's Office
Federal Election Commission
999 E. Street, NW
Washington, D.C. 20463

Re: MUR 3004 Masao Hayashi

Dear Mr. Allen:

I am the attorney representing Mr. Masao Hayashi with regard to MUR 3004. In that capacity and on behalf of Mr. Hayashi, I hereby respond to the Federal Election Commission's notice of complaint dated November 20, 1989, alleging a violation of the Federal Election Campaign Act of 1971 (hereinafter referred to as the "Act"). This response is made pursuant to 11 C.F.R. Part 111 and the extension of time in which to respond to the notice of complaint which was approved by your Office.

It is our position that there is no reason to believe that the complaint sets forth a violation of the Act by Masao Hayashi and, accordingly, the Commission should close the file on this matter.

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I. THE COMPLAINT DOES NOT ALLEGE THAT MASAO HAYASHI, AS AN INDIVIDUAL, VIOLATED THE ACT.

The complaint does not allege a violation of the Act by Masao Hayashi as an individual. The rules of procedure governing the contents of a complaint under the Act require that "[i]t should clearly identify as a respondent each person or entity who is alleged to have committed a violation." 11 CFR 111.4 (d)(1). The only reference to Mr. Hayashi is contained on page 4 of the complaint under Section 2, paragraph 11 which identifies the following party as having made a contribution to State Representative Romy Cachola: "Masao Hayashi Japan Travel International, Inc. - 2270 Kalakaua Ave[.], Honolulu[,] H[I] 96815, a foreign owned and/or controlled corporation contributed $250.00 on 2/23/89."

The allegation is explicitly made against a corporate entity rather than an individual. Masao Hayashi is a natural

person. He is neither a corporate entity nor does he have knowledge of a corporation by the name of "Masao Hayashi Japan Travel International, Inc." *See Affidavit of Masao Hayashi.*

The power of the Commission to engage in enforcement proceedings is governed by 2 U.S.C. §437g. Under this section, the procedures for enforcement are limited to "any person alleged in the complaint to have committed" a violation of the Act. In light of this limitation imposed upon the Commission by 2 U.S.C. §437g and the procedural requirements of 11 CFR 111.4(d)(1), the failure of the complaint to allege that Masao Hayashi individually violated the Act precludes any action by the Commission against Mr. Hayashi based upon the present complaint.

II. MASAO HAYASHI DID NOT MAKE A CONTRIBUTION TO STATE REPRESENTATIVE ROMY CACHOLA.

Even if the Commission were permitted to investigate Masao Hayashi based upon the complaint, there is no factual basis for a belief that Masao Hayashi violated the Act. Mr. Hayashi did not make a contribution to State Representative Romy Cachola in the amount of $250.00 on February 23, 1989.

Based upon our investigation of the allegation against Mr. Hayashi, it appears that the complaint is based upon a contribution made by Japan Travel Bureau International, Inc. to Friends of Romy Cachola. *See Exhibit "A".* That contribution was made by Japan Travel Bureau International, Inc., a United States corporation that was created under the laws of New York and which is licensed to do business in the State of Hawaii. There is nothing on the check to indicate that it represents a personal contribution by Masao Hayashi or that Mr. Hayashi was involved in a personal capacity in the making of the contribution to the Friends of Romy Cachola.

Further action by the commission against Mr. Hayashi based upon this complaint is not warranted by the facts underlying the allegation made in the complaint.

III. CONCLUSION

No further action against Mr. Masao Hayashi based on this complaint is warranted. The complaint does not allege that Mr. Hayashi violated the Act in any manner. Even if the complaint had identified Mr. Hayashi as the source of the contribution to Romy Cachola, the evidence clearly establishes that no such contribution was in fact made by Mr. Hayashi.

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Based upon the arguments presented herein and the Affidavit of Masao Hayashi and Exhibit "A" attached hereto, there is no reason to believe that Masao Hayashi has committed or is about to commit a violation of the Act as alleged in the complaint.

Sincerely,

Michael K. Tanigawa

MICHAEL K. TANIGAWA

Tanigawa & Tanigawa
Attorneys for
MASAO HAYASHI

encl.

9404357341 2

JAPAN TRAVEL BUREAU INTERNATIONAL, INC.
OFFICE ACCOUNT
2270 Kalakaua Ave.
Honolulu, Hawaii 96815

18410

--PROCESSED--06[illegible]

DATE	PAY TO THE ORDER OF	AMOUNT
Feb. 23, 1989	FRIENDS OF ROMY CACHOLA	$***250.00***

WAIKIKI BRANCH
Central Pacific Bank
HONOLULU, HAWAII

--PROCESSED--072015 03

⑈018410⑈ ⑆121301578⑆ 06⑈00469 5⑈ ⑇0000025000⑇

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EXHIBIT "A"

AFFIDAVIT OF MASAO HAYASHI

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

I, MASAO HAYASHI, having been duly sworn on oath, deposes and says:

1. I have received a copy of the complaint in MUR 3004 and I am aware of the allegations made against me by that complaint;

2. The complaint alleges that on February 23, 1989, "Masao Hayashi Japan Travel International, Inc. - 2270 Kalakaua Ave, [sic] Honolulu Hi [sic] 96815, a foreign owned and/or controlled corporation contributed" two hundred and fifty dollars ($250.00) to Representative Romy Cachola;

3. I have no knowledge of a corporation by the name of Masao Hayashi Japan Travel International, Inc.;

4. I did not make a personal contribution of two hundred and fifty dollars ($250.00) to Representative Romy Cachola or to the Friends of Romy Cachola in 1989;

5. On February 23, 1989, Japan Travel Bureau International, Inc. made a contribution to the Friends of Romy Cachola in the amount of two hundred and fifty dollars ($250.00) drawn on the office account (see Exhibit "A");

6. I did not sign the check dated February 23, 1989 drawn on the office account of Japan Travel Bureau International, Inc. and made payable to the Friends of Romy Cachola;

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7. Japan Travel Bureau International, Inc. is a U.S. corporation organized and created under the laws of the State of New York;

FURTHER, AFFIANT SAYETH NAUGHT.

MASAO HAYASHI

Subscribed and sworn to before me
this 26th day of December, 1989.

Notary Public, State of Hawaii
My Commission expires: 1/22/93

9404357341 5

OGC 7404

MATSUBARA, LEE & KOTAKE
ATTORNEYS AT LAW
A LAW CORPORATION

BENJAMIN M. MATSUBARA
GARY S. K. T. LEE
MERVYN M. KOTAKE
STEPHANIE A. REZENTS

EDSEL M. YAMADA

Howard M. Nobunaga

CHARLES R. KENDALL BUILDING
888 MILILANI STREET, EIGHTH FLOOR
HONOLULU, HAWAII 96813-2918
TELEPHONE: (808) 526-9566
FACSIMILE: (808) 536-3840

August 7, 1990

90 AUG 13 AM 11:44

Lawrence M. Noble
Office of the General Counsel
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Re: MUR 2892-Hiroshi Kobayashi

Dear Mr. Noble:

Please find enclosed Mr. Kobayashi's response to the Federal Election Commission's Request for Answers to Interrogatories and Production of Documents.

If you have any questions, please contact me at your convenience.

Very truly yours,

MATSUBARA, LEE & KOTAKE

Mervyn M. Kotake

Mervyn M. Kotake

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 AUG 13 PM 2:44

MMK:llm/0985G

Enclosures

cc: Hiroshi Kobayashi

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
HIROSHI KOBAYASHI	)	MUR 2892
	)	
	)	
	)	

HIROSHI KOBAYASHI'S RESPONSE TO
THE FEDERAL ELECTION COMMISSION'S REQUEST FOR
ANSWERS TO INTERROGATORIES AND PRODUCTION OF DOCUMENTS

Comes now HIROSHI KOBAYASHI by and through his attorneys, MATSUBARA, LEE & KOTAKE, and hereby responds to the request for answers to interrogatories propounded upon him by THE FEDERAL ELECTION COMMISSION as follows:

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INTERROGATORIES AND REQUEST FOR

PRODUCTION OF DOCUMENTS

TO: Hiroshi Kobayashi MUR 2892

1. State your name, address (home and business), telephone number (home and business) and occupation.

Answer:

Hiroshi Kobayashi
921 Aliamanu Place (home)
Honolulu, Hawaii 96818
(808)422-7623

2850 Paa Street, Room 219 (business)
Honolulu, Hawaii 96819
(808)834-4600

President - Honolulu Warehouse Co.

2. State you nationality.

Answer:

Japanese

3. Are you a resident alien of the United States? If so, provide your INS folder number.

Answer:

Yes.
INS folder number

4. If you are not a United States citizen or a permanent resident alien of the United States, list all contributions (date, amount, recipient) made by you to federal, state and local elections.

Answer:

Inapplicable because Mr. Kobayashi is a permanent resident alien.

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5. List all persons who participated in the decision to make each contribution noted above.

Answer:

Inapplicable because Mr. Kobayashi is a permanent resident alien.

6. If the contributions noted above were made from funds other than your own, state the source of funds used to make these contributions.

Answer:

Inapplicable because Mr. Kobayashi is a permanent resident alien.

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OGC 7423

CARLSMITH BALL
WICHMAN MURRAY CASE MUKAI AND ICHIKI
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING LAW CORPORATIONS
1001 BISHOP STREET
PACIFIC TOWER, SUITE 2200
POST OFFICE BOX 656
HONOLULU, HAWAII 96809
TELEPHONE (808) 523-2500
FAX (808) 523-0842

LOS ANGELES-DOWNTOWN OFFICE
TELEPHONE (213) 955-1200
FAX (213) 623-0032

LOS ANGELES-MID WILSHIRE OFFICE
TELEPHONE (213) 937-8999
FAX (213) 935-0493

LONG BEACH OFFICE
TELEPHONE (213) 435-5611
FAX (213) 437-3760

GUAM OFFICE
TELEPHONE (671) 472-6813
FAX (671) 477-4375

HILO OFFICE
TELEPHONE (808) 935-6644
FAX (808) 935-7975

KONA OFFICE
TELEPHONE (808) 329-6464
FAX (808) 329-9450

MAUI OFFICE
TELEPHONE (808) 242-4535
FAX (808) 244-4974

SAIPAN OFFICE
TELEPHONE (670) 322-3455
FAX (670) 322-3368

90 AUG 14 AM 9:37

August 10, 1990

VIA TELECOPIER

TO: Federal Election Commission
Attention: Mr. Michael J. Troy

FROM: Karl K. Kobayashi

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 AUG 14 PM 12:46

TELECOPY NO.: 1-202-376-5280

(If telecopy is being sent internationally, please include "country code" and "route code", before the telecopy number.)

TELEPHONE NO.: 1-202-376-5690

NUMBER OF PAGES INCLUDING THIS COVER SHEET:

CASE NAME: CWCMI-FEC
CASE NUMBER: 019998-73

MESSAGE: Re: MUR 2846 and MUR 2892/Taiyo Hawaii Company, Ltd.

Please find enclosed answers to your interrogatories on behalf of Taiyo Hawaii Company, Ltd. The item number on the attached answers relates to the item number of your interrogatories. If you have any questions or require additional information, please let us know. We again request that the commission consider pre-probable cause conciliation in connection with this matter.

I9028963

==========

If problems occur, please call (Telecopy Operator) at (808) 523-0311, or Iris (Secretary) at Ph. (808) 523-2635.

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ANSWERS TO INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

1. Name: Taiyo Hawaii Company, Ltd.

   Local address: 1001 Bishop Street, Suite 1140, Pacific Tower, Honolulu, Hawaii 96813

   Business: Real estate development - single-family residential developer

   Place of incorporation: Japan

2. All officers and directors of Taiyo Hawaii Company, Ltd. are:

A) Full name: Michio Ito

   Most recent business: Vice President, Director and General Manager of Taiyo Hawaii Company, Ltd.

   Residence address: 6750 Hawaii Kai Drive, Apartment #108, Honolulu, Hawaii 96825

   Telephone number: 808-395-5681

   Present occupation or position: Vice President, Director and General Manager of Taiyo Hawaii Company, Ltd.

   Nationality: Japan

   Not a United States citizen. Presently a resident alien in the United States.

B) Full name: Patrick Tadashi Kubota

   Most recent business: Treasurer of Taiyo Hawaii Company, Ltd.

   Residence address: 1198 Honokahua Street, Honolulu, Hawaii 96825

   Telephone number: 808-396-7469

   Present occupation or position: Treasurer of Taiyo Hawaii Company, Ltd.

   Nationality: United States of America

   A United States citizen and permanent residence of the United States

C) Full name: Hiroshi Kato

   Most recent business: Secretary of Taiyo Hawaii Company, Ltd.

   Residence address: 1517 Makiki Street, #1601, Honolulu, Hawaii 96822

   Telephone number: 808-944-8688

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Present occupation or position: Secretary of Taiyo Hawaii Company, Ltd.

Nationality: Japan

Not a United States citizen. Presently a permanent resident alien in the United States.

D) Full name: Kenichi Ochihata

Most recent business: President and Director of Taiyo Hawaii Company, Ltd. and Director of The Seiyo Corporation (parent company of Taiyo Hawaii Company, Ltd.)

Residence address: 1526-38, Oaza-Yamaguchi, Tokorozawa, Saitama, Japan

Telephone number: 0429-23-2545

Present occupation or position: President and Director of Taiyo Hawaii Company, Ltd. and Director of The Seiyo Corporation

Nationality: Japan

Not a United States citizen and not a permanent resident alien of the United States

E) Full name: Minoru Maeda

Most recent business: Director of Taiyo Hawaii Company, Ltd. and Director of The Seiyo Corporation (parent company of Taiyo Hawaii Company, Ltd.)

Residence address: 6-23-8 Shimouma, Setagaya-ku, Tokyo, Japan

Telephone: 03-418-7529

Present occupation or position: Director of Taiyo Hawaii Company, Ltd. and Director of The Seiyo Corporation

Nationality: Japan

Not a United States citizen and not a permanent resident alien of The United States

F) Full name: Eiji Miyoshi

Most recent business: Director of Taiyo Hawaii Company, Ltd. and a staff member of The Seiyo Corporation's corporate planning division

Residence address: 1211-2 Nishi-Tsurugaoka, Apt. A-403, Oimachi, Iruma-Gun, Saitama, Japan

Present occupation or position: Director of Taiyo Hawaii Company, Ltd. and a staff member of The Seiyo Corporation's corporate planning division

Nationality: Japan

Not a United States citizen and not a permanent resident alien of the United States

3. All management personnel of Taiyo Hawaii Company, Ltd. are:

Michio Ito

Patrick Tadashi Kubota

Hiroshi Kato

4. Taiyo Hawaii Company, Ltd. is a 100% owned subsidiary of The Seiyo Corporation, a Japan corporation

The legal name of The Seiyo Corporation in Japan is Kabushiki Kaisha Seiyo Kankyo Kaihatsu

Address: 3-1-1, Higashi-Ikebukuro, Sunshine 60 Building, Toshima-ku, Tokyo 170, Japan

Chief executive officer: Kenichi Ochihata

5. For list of contributions and refunds - see separate list attached

Taiyo Hawaii Company, Ltd. is not required to file reports with any State election board.

6. Michio Ito and Patrick Tadashi Kubota are all the persons who participated in the making of each contribution noted above.

7. Source of funds to make contributions came from Taiyo Hawaii Company, Ltd.'s operations in Hawaii

8. Taiyo Hawaii Company, Ltd. does not maintain any political action committee

9. Taiyo Hawaii Company, Ltd. does not maintain any pool of funds specified for election activity.

10. Michio Ito is the respondent to these questions. He has been associated with Taiyo Hawaii Company, Ltd. for three years as Director, Vice President and General Manager.

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LIST OF CONTRIBUTIONS - January 1, 1986 to Present

Recipient	Date of Check	Amount	Office Recipient Seeking
Friends of Senator Malama Solomon	2/18/86	$ 100	State Senate
Oahu Friends of Dick Matsuura	2/18/86	90	State Senate
Friends of Frank DeLuz III	5/08/86	100	County Council
Friends of Pat Ribelle	7/11/86	50	City Council
Friends of Carpenter	12/04/86	50	Mayor of County of Hawaii
Build-Pac Hawaii	1/20/87	50	N/A
Friends of Senator Malama Solomon	2/27/87	75	State Senate
Oahu Friends of Dick Matsuura	2/27/87	125	State Senate
Friends for Fasi	8/25/87	250	Mayor of City & County of Honolulu
Friends of Takashi Domingo	10/06/87	100	County Council
Friends of Carpenter	11/13/87	100	Mayor of County of Hawaii
Build-Pac Hawaii	1/15/88	50	N/A
Friends of Malama Solomon	1/29/88	100	State Senate
Friends of Senator Dick Matsuura	2/12/88	125	State Senate
Committee to Re-Elect Stephen K. Yamashiro	3/14/88	500	County Council
Friends of Bob Herkes	3/24/88	50	County Council
Friends of Frank DeLuz	3/24/88	100	County Council
Friends of Lorraine Jitchaku Inouye	6/22/88	2,000	County Council
Friends for Keith Kaneshiro	7/26/88	100	Prosecutor for Honolulu
Friends of Takashi Domingo	8/25/88	500	County Council
Friends of Carpenter	8/25/88	50	Mayor of County of Hawaii
Friends of Harry Ruddle	9/08/88	500	County Council
Friends of Lorraine R. Jitchaku Inouye	10/05/88	500	County Council
Friends of Carpenter	10/11/88	2,000	Mayor of County of Hawaii
Friends of Harry Ruddle	10/13/88	550	County Council
Friends of Malama Solomon	1/18/90	250	State Senate
Build-Pac Hawaii	4/04/89	125	N/A
Build-Pac Hawaii	1/22/90	100	N/A

LIST OF REFUNDS RECEIVED FROM ABOVE CONTRIBUTORS

Recipient	Date of Refund	Amount
Friends of Fasi	9/11/89	$250
Friends of Richard Matsuura	1/08/90	$150

CARLSMITH BALL
WICHMAN MURRAY CASE MUKAI AND ICHIKI
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING LAW CORPORATIONS
1001 BISHOP STREET
PACIFIC TOWER SUITE 2200
POST OFFICE BOX 656
HONOLULU HAWAII 96809
TELEPHONE (808) 523-2500
FAX (808) 523 0842

LOS ANGELES-DOWNTOWN OFFICE
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FAX (213) 623-0032

LOS ANGELES-MID WILSHIRE OFFICE
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FAX (213) 935-0493

LONG BEACH OFFICE
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FAX (213) 437 3761

GUAM OFFICE
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FAX (671) 477 4375

HILO OFFICE
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FAX (808) 935-7975

KONA OFFICE
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FAX (808) 329-8450

MAUI OFFICE
TELEPHONE (808) 242 4535
FAX (808) 244 4974

SAIPAN OFFICE
TELEPHONE (670) 322 3455
FAX (670) 322 3368

August 10, 1990

VIA TELECOPIER

TO: Federal Election Commission
Attention: Mr. Michael J. Troy

FROM: Karl K. Kobayashi

TELECOPY NO.: 1-202-376-5280

(If telecopy is being sent internationally, please include "country code" and "route code", before the telecopy number.)

TELEPHONE NO.: 1-202-376-5690

NUMBER OF PAGES INCLUDING THIS COVER SHEET:

CASE NAME: CWCMI-FEC
CASE NUMBER: 019998-73

MESSAGE: Re: MUR 2846 and MUR 2892/Hawaii Omori Corporation

Please find enclosed answers to your interrogatories on behalf of Hawaii Omori Corporation. The item number on the attached answers relates to the item number of your interrogatories. If you have any questions or require additional information, please let us know. We again request that the commission consider pre-probable cause conciliation in connection with this matter.

I9028930

If problems occur, please call (Telecopy Operator) at (808) 523-0311, or Iris (Secretary) at Ph. (808) 523-2635.

9 4 0 4 3 5 7 3 4 2 5

Ref: Hawaii Omori Corporation MVR2892

In answer to Interrogatories and Request for Production of Documents.

1. Hawaii Omori Corporation
West Maui Center, Annex A
910 Honoapiilani Highway
Lahaina, HI 96761

Mailing address: P. O. Box 1570
Lahaina, HI 96767-1570

Business: Real estate development and rentals
Incorporated: State of Hawaii (2/26/73)

2. List of Officers/Directors: 1986

President/Director	Masao Omori
Exec. Vice President	Yasuhisa Kubomura
Vice President	Shinichi Ishizuka
V.P./Director	Akira Hasei
Vice President	Kenzo Tomioka
Tres.& Sec/Chairman	Shigemitsu Omori
Asst. Sec/Director	Andy Ichiki
V.P./Director	Yoneko Omori
V.P./Director	Douglas Sodetani
Director	Meyer Ueoka
Director	Donald Tokunaga
Director	Seiya Ohata

List of Officers/Directors: 1987

President/Director	Masao Omori
Exec.Vice President	Yasuhisa Kubomura (1/87-6/87)
	Masahiko Kobayashi (6/87-12/87)
Vice President	Shinichi Ishizuka (1/87-2/87)
	Toru Okada (3/87-12/87)
V.P/Director	Akira Hasei
Tres.& Sec./Chairman	Shigemitsu Omori
Asst. Sec/Director	Andy Ichiki
V.P./Director	Yoneko Omori
V.P./Director	Douglas Sodetani
Director	Meyer Ueoka
Director	Donald Tokunaga
Director	Seiya Ohata

List of Officers/Directors: 1988

President/Director	Masao Omori
Exec. Vice President	Masahiko Kobayashi

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2. List of Officers/Directors: 1988-con't.

Vice President	Toru Okada
V.P./Director	Akira Hasei
Tres. & Sec/Chairman	Shigemitsu Omori
Asst. Sec/Director	Andy Ichiki
V.P./Director	Yoneko Omori
V.P./Director	Douglas Sodetani
Director	Meyer Ueoka
Director	Donald Tokunaga
Director	Seiya Ohata

List of Officers/Directors: 1989

President/Director	Masao Omori
Exec. Vice President	Masahiko Kobayashi (1/89-7/89)
Vice President	Akio Hinohara (7/89-12/89)
Vice President	Toru Okada (1/89-2/89)
	Shigeru Horii (3/89-12/89)
V.P/Director	Akira Hasei
Tres.& Sec./Chairman	Shigemitsu Omori
Asst.Sec/Director	Andy Ichiki
V.P./Director	Yoneko Omori
V.P./Director	Douglas Sodetani
Director	Meyer Ueoka
Director	Donald Tokunaga
Director	Seiya Ohata

List of Officers/Directors: 1990

President/Director	Masao Omori
Exec. Vice President	Hideshi Nagata (5/90-present)
Vice President	Akio Hinohara
Vice President	Shigeru Horii
Tres.& Sec./Chairman	Shigemitsu Omori
Asst. Sec.	Ed Kushi
V.P./Director	Yoneko Omori
V.P./Director	Douglas sodetani
Director	Meyer Ueoka

3. Management Personnel:

Vice President/Controller	Clifford Tsuji	(1/86-11/86)
Controller	Lionel Jakahi	(3/87-3/89)
Controller	Keane Oka	(7/89-4/90)
Rental Property Manager	George Kishiba	(1/86-8/88)
Rental Property Manager	Don Mitsumura	(2/89-Present)
Planning & Development Mgr.	Harold Mizomi	(3/83-Present)
Shopping Center General Mgr	Herb Sato	(10/86-6/89)

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4. **Ownership of Company:**

Shonan Kanko Kaihatsu, Japan:	64.8%
K.K. Omori Shoten, Japan :	35.2%

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5. LIST OF CONTRIBUTIONS FROM JANUARY 1, 1986 TO PRESENT

DATE	RECIPIENT	AMOUNT
1986 2/21	Goro Hokama Fund Raiser	$200.00
2/21	Committee to Re-elect Hannibal Tavares	200.00
2/21	Citizens for Waihee	150.00
3/14	Rohlfing for Hawaii	200.00
4/10	Golfa Classic (H. Kihune)	120.00
4/10	Golfa Classic (H. Kihune)	60.00
6/25	Friends of Herbert Honda	750.00
6/25	Friends of Joe Souki	150.00
6/25	Friends of Abe Aiona	300.00
7/05	Friends of Joe Tanaka	200.00
7/05	Friends of Bob Nakasone	300.00
8/11	Friends of Rosalyn Baker	300.00
9/25	Friends of Howard Kihune	1,000.00
9/25	Friends of Wayne Nishiki	300.00
10/22	Friends of Councilman Bob Nakasone	625.00
10/22	Friends of John Waihee	2,000.00
1987 2/12	Senator Malama Solomon	50.00
2/12	Citizens for Waihee	700.00
6/22	Golfa Classic (H. Kihune)	500.00
6/22	Golfa Classic (H. Kihune)	120.00
8/27	Velma's Aikanes	250.00
8/27	Linda Lingle Campaign Committee	250.00
10/15	Tanaka Tee-Off	240.00
10/15	Councilman Joe Tanaka	500.00
11/30	Pat Kawano-D.D.C.T.	250.00
11/30	Pat Kawano-D.D.C.T.	500.00
1988 4/14	Golfa Classic (H. Kihune)	400.00
4/22	Goro Hokama Fundraiser	400.00
4/22	Roz Baker	250.00
5/26	Rick Medina	100.00
6/09	Councilwoman Linda Lingle	250.00
6/09	Friends of Mamoru Yamasaki	500.00
6/16	Tanaka Tee-Off	120.00
6/16	Tanaka Tee-Off	500.00
7/11	Roz Baker	140.00
7/15	Pat Kawano	120.00
7/15	Friends of Alice Lee	100.00
7/15	Velma's Aikanes	500.00
7/15	Pat Kawano	500.00
7/26	Bob Nakasone Fundraiser	200.00
8/25	Joe Tanaka	150.00
9/20	An Evening with Joe Souki	100.00
10/18	Friends of Rick Medina	250.00

9 4 0 4 3 5 7 3 4 2 9

1989	3/14	Friends of Roz Baker	$250.00
	6/21	Hokama's(Maui County Democratic Party)	249.00
	7/06	Velma's Aikanes	350.00
	7/20	Roz Baker Golf Tournament	140.00
	8/15	Golfa Classic (H.Kihune)	500.00
	9/08	Linda Lingle Campaign Committee	300.00
	9/08	Friends of Alice Lee	100.00
	9/15	Mayor Tavares	150.00
	9/21	An Evening with Joe Souki	200.00
	9/25	Tanaka Tee-Off	300.00
	9/25	Tanaka Tee-Off	120.00
	11/30	Kawano GT III	300.00

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6. a) Mr. Masao Omori -President/Director
   b) Mr. Harold Mizomi - Property Development Manager
   c) Executive Vice President, then in the office
   d) Controller, then in the office

7. The source of funds used for making contributions were from Hawaii Omori Corporation's operations in Hawaii. The funds used to make the contributions listed were not provided directly or indirectly by a foreign national.

8. Hawaii Omori Corporation has/had no political action committee up to the present.

9. Hawaii Omori Corporation has/had no pool of funds specified for election activity up to the present.

10. a) Mr. Harold Mizomi
    U.S. citizen
    Residence: 231 Nalani St. Pukulani, HI 96768
    (808)572-4855
    Occupation: 3/83 to present
    Planning and Development Manager

    b) Mr. Akio Hinohara
    Japanese citizen, residing on Maui since 6/2/89 under "E-2" visa
    Resident: 417-B Front St., Lahaina, HI 96761
    (808)667-9240
    Occupation: Executive Vice President 6/89 to 12/89
    Vice President 1/90 to present

2404357343 1

CARLSMITH BALL
WICHMAN MURRAY CASE MUKAI AND ICHIKI
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING LAW CORPORATIONS
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FAX (808) 244 4974

SAIPAN OFFICE
TELEPHONE (670) 322 3455
FAX (670) 322 3368

August 10, 1990

VIA TELECOPIER

TO: Federal Election Commission
Attention: Mr. Michael J. Troy

FROM: Karl K. Kobayashi

TELECOPY NO.: 202-376-5280

(If telecopy is being sent internationally, please include "country code" and "route code", before the telecopy number.)

TELEPHONE NO.: 202-376-5690

NUMBER OF PAGES INCLUDING THIS COVER SHEET:

CASE NAME: CWCMI-FEC
CASE NUMBER: 019998-73

MESSAGE: Re: MUR 2846 and 2892/Pan Pacific Development, Inc.

Please find enclosed on behalf of Pan Pacific Development, Inc., the answers to your interrogatories in connection with the above-referenced matter. The item number on the attached answers refers to the item number of your interrogatories.

As you can see, all funds used for the contributions were generated from the company's Hawaii operations. Furthermore, the people who were involved in making the decisions to make the contribution, Mr. Wilfred Nakakura and Mr. Terry Adaniya, are both United States citizens.

If you have any questions or require additional information, please let us know. Again, we request that this matter be dismissed by the commission. If the commission does not dismiss the matter, we would again request pre-probable cause conciliation.

X9028925

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If problems occur, please call (Telecopy Operator) at (808) 523-0311, or Iris (Secretary) at Ph. (808) 523-2635.

9404357343 2

ANSWERS TO FEDERAL ELECTION COMMISSION INTERROGATORIES

1. Name: Pan-Pacific Development, Inc.
   Address: Suite 2350, Pauahi Tower
   1001 Bishop Street
   Honolulu, Hawaii 96813
   Business: Real Estate Development and Brokerage
   Incorporated: Honolulu, State of Hawaii

2. Officers: See attached sheet
   Directors: See attached sheet

3. Seiichi Karahashi: Executive Vice President and Treasurer
   Terry Adaniya : Senior Vice President/Principal Broker
   Nobukazu Kawasaki: Vice President
   Takeshi Kobayashi: Secretary
   Hideaki Mitsui : Assistant Treasurer
   Roland Nishimura : Manager

4. Pan-Pacific Development, Inc., is a subsidiary of Tokyu Construction Company. Tokyu Construction Company is a hundred percent owner of Pan-Pacific Development, Inc. Pan-Pacific Development is a Hawaii based company and Tokyu Construction Company a Japan based company.

5. See attached list for all contributions made since 1988. No refunds received.

6. Wilfred Nakakura, President of Pan-Pacific Construction Company, and Terry Adaniya, Senior Vice President, Pan-Pacific Development, Inc.

7. Source of Fund: Contributions were made from the local earnings of the company. No funds were contributed by the parent company for local campaign use.

8. Political action committee = None

9. Pool of funds specified for election activity = None

9404357343 3

PAN-PACIFIC DEVELOPMENT, INC.
Pauahi Tower Suite 2350 1001 Bishop Street Honolulu Hawaii 96813 Telephone (808) 537 2922 Facsimile (808) 521 6308 Telex 7430266

10. Person preparing these answers = Terry Adaniya with the help of Takeshi Kobayashi and Attorney, Karl Kobayashi.

Terry Adaniya:	Entered company in January 1986 as Principal Broker and Vice President of Development.
Takeshi Kobayashi:	Entered company in 1987. Kept records of all expenditures.
Karl Kobayashi:	Attorney used to prepare documents.

9404357334

1988 LIST OF CONTRIBUTIONS

6/01/88	Citizen for Waihee	500.00
6/30/88	Friends for Fasi	500.00
8/05/88	Mink Campaign	1,000.00
1/11/89	Mansho for City Council	125.00
2/15/89	Friends for David Kahanu	125.00
9/26/89	Refund	(125.00)
10/13/89	Solate to Mayor Fasi	1,000.00
1/23/90	Mansho for City Council	250.00
3/13/90	Friends for Tajiri	125.00
4/04/90	Friends for A. Amaral	50.00
	Total	$3,550.00

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Corporate Officers and Directors of Pan-Pacific Development, Inc.

Corporate Officers:

1.	Tetsu Gotoh	President
2.	Shinichi Kobayashi	Executive Vice President
3.	Seiichi Karahashi	Executive Vice President and Treasurer
4.	Terry Adaniya	Vice President
5.	Nobukazu Kawasaki	Vice President
6.	Takeshi Kobayashi	Secretary
7.	Hideaki Mitsui	Assistant Treasurer

Directors:

1.	Yuhei Yagi	Chairman
2.	Mitsufumi Yanagida	Vice Chairman
3.	Tetsu Gotoh	Director
4.	Takayuki Igarashi	Director
5.	Tsutomu Koyake	Director
6.	Shinichi Kobayashi	Director
7.	Seiichi Karahashi	Director
8.	Kenneth Brown	Director
9.	Nobuo Saito	Director
10.	Makoto Yuki	Director
11.	Nobukazu Kawasaki	Director
12.	Terry Adaniya	Director

Address: 2350 Pauahi Tower, 1001 Bishop Street, Honolulu, Hawaii 96813
Phone: (808) 521-6172

2 4 0 4 3 5 7 3 4 3 6

CARLSMITH BALL
WICHMAN MURRAY CASE MUKAI AND ICHIKI
ATTORNEYS AT LAW
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FAX (213) 623 0032

LOS ANGELES MID WILSHIRE OFFICE
TELEPHONE (213) 937 8999
FAX (213) 935 0493

LONG BEACH OFFICE
TELEPHONE (213) 435 56[illegible]
FAX (213) 437 3760

GUAM OFFICE
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FAX (671) 477 4375

HILO OFFICE
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FAX (808) 935 7975

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August 10, 1990

VIA TELECOPIER

TO: Federal Election Commission
Attention: Mr. Michael J. Troy

FROM: Karl K. Kobayashi

TELECOPY NO.: 202-376-5280

(If telecopy is being sent internationally, please include "country code" and "route code", before the telecopy number.)

TELEPHONE NO.: 202-376-5690

NUMBER OF PAGES INCLUDING THIS COVER SHEET:

CASE NAME: CWCMI-FEC
CASE NUMBER: 019998-73

MESSAGE: Re: MUR 2846 and 2892/Jet Hawaii, Inc.

Please find enclosed on behalf of Jet Hawaii, Inc., the answers to your interrogatories in connection with the above-referenced matter. The item number on the attached answers refers to the item number of your interrogatories.

As you can see, all funds used for the contributions were generated from the company's Hawaii operations. Furthermore, the people who were involved in making the decisions to make the contribution is either a United States citizen or a U.S. permanent resident. Mr. Hirohide Kamimura is a permanent resident of the United States and Ms. Patricia Yoshimoto is a United States citizen.

If you have any questions or require additional information, please let us know. Again, we request that this matter be dismissed by the commission. If the commission does not dismiss the matter, we would again request pre-probable cause conciliation.

I9028961

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If problems occur, please call (Telecopy Operator) at

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JET HAWAII, INC.

LETTER FROM FEDERAL ELECTION COMMISSION
DATED 5/21/90
MUR 2892

PAGE 4 - INTERROGATORIES AND REQUEST FOR PRODUCTTION OF DOCUMENTS

1. JET HAWAII, INC.
   2255 KUHIO AVE., SUITE 1601
   HONOLULU, HAWAII 96815

   TOUR & TRAVEL
   STATE OF HAWAII

2. | | |
   |---|---|
   | Hirohide Kamimura | President/Treasurer/Director |
   | Patricia Yoshimoto | Vice President/Secretary |
   | Akihiro Iizuka | Vice President |
   | Kiyomi Sugahara | Executive Advisor |
   | Osamu Hatta | Director |
   | Shozo Noda | Director |
   | Kenji Kimimura | Director |
   | Tsuneo Kobayashi | Director |

3. | | |
   |---|---|
   | Hirohide Kamimura | President |
   | Patricia Yoshimoto | Vice President, Finance & Administation |
   | Akihiro Iizuka | Vice President, Operations |
   | Danny Ojiri | Manager, Marketing Systems |
   | Makoto Itani | Manager, Customer Service |
   | Sylvie Courbe | Manager, National Sales |

4. Subsidiary of Jetour, Inc.

5. See attached list.

6. Hirohide Kamimura & Patricia Yoshimoto.

7. Jet Hawaii, Inc. company funds. No funds were directly or indirectly provided by a foreign national.

8. No.

9. No.

10. Patricia Yoshimoto, employed since September 1973 as:
    - Accounting Clerk
    - Accounting Supervisor
    - Accounting Manager
    - Director of Finance
    - Vice President, Finance & Administration

9404357338

JET HAWAII, INC.
INTERROGATORIES AND REQUEST FOR PRODUCITON OF DOCUMETS
SUPPLEMENTAL LIST

REF: Letter from Federal Election Commission
Political Contributions

	PAYEE	CHECK #	AMOUNT
1987			
5/29	Friends of Tony T. Kunimura c/o Chris Chang	012853	$100.00
8/27	Friends for Fasi c/o W. Lawrence Clapp, Esq.	014053	$250.00
	Total for 1987		$350.00
1988			
4/04	Friends for Fasi c/o W. L. Clapp	017095	$250.00
4/05	Friends for Fred Hemmings, Jr.	017118	$250.00
6/21	Friends of Tony T. Kunimura	018053	$100.00
9/29	Democratic Party of Hawaii	019186	$100.00
	Total for 1988		$700.00
1989			
	NONE		

9404357343 9

OGC 7706

CARLSMITH BALL WICHMAN MURRAY CASE MUKAI ICHIKI

ATTORNEYS AT LAW
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FAX (213) 935-0483

LONG BEACH OFFICE
TELEPHONE (213) 435-563
FAX (213) 437-3760

GUAM OFFICE
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FAX (671) 477-4375

HILO OFFICE
TELEPHONE (808) 935-4444
FAX (808) 935-7844

KONA OFFICE
TELEPHONE (808) 329-6464
FAX (808) 329-8480

MAUI OFFICE
TELEPHONE (808) 242-4535
FAX (808) 244-4074

SAIPAN OFFICE
TELEPHONE (670) 322-3455
FAX (670) 322-3366

August 31, 1990

90 AUG 35 AM 9:05

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

9140 AM 11:24

VIA TELECOPIER

TO: Federal Election Commission
Attention: Mr. Michael J. Troy

FROM: Karl K. Kobayashi

TELECOPY NO.: 1-202-376-5280

(If telecopy is being sent internationally, please include "country code" and "route code", before the telecopy number.)

TELEPHONE NO.: 1-202-376-5690

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 2

CASE NAME: CWCMI-FEC
CASE NUMBER: 019998-73

MESSAGE: MUR 2846 and [redacted]/Nitto Hawaii Co., Ltd.

Please find enclosed answers to your interrogatories on behalf of Nitto Hawaii Co., Ltd. The item number on the attached answers relates to the item number of your interrogatories. If you have any questions or require additional information, please let us know. We again request that the commission consider pre-probable cause conciliation in connection with this matter.

I9031818

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If problems occur, please call (Telecopy Operator) at (808) 523-0311, or Iris (Secretary) at Ph. (808) 523-2635.

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NITTO HAWAII CO., LTD.

1. Nitto Hawaii Co., Ltd.
   84-627 Makaha Valley Road
   Waianae, HI 96792

2. Corp. Officers

Chairman of the Board	Hitoshi Matsuura
Vice Chairman	Kaname Mizuno
President & Treasurer	Takeshi Niino
Vice President	Yoshio Matsuura
Secretary	Toshio Kobayashi

Directors

Kinjuro Suzuki	Ken Kiyabu
Kimio Nakamura	Norman Mizuguchi
Hirofumi Saito	Laurence Vogel
Wallace Fujiyama	Pepper Shiramizu
Henry Peters	Franklin Tokioka

3. Management Personnel

Yoshio Sano	Deputy General Manager
Yoichi Tsuchiya	Administrative Deputy Manager
Russell Hirata	Pro Shop Manager
James Vallelunga	Asst. Pro Shop Mgr.
Susan Thalheimer	Head Waitress
Dorothy Seghorn	Asst. Chef
Antonio Moresca	Asst. Chef
William Hayashi	Golf Course Chief Superintendent
Garrick Iwamoto	Golf Course Superintendent

4. Nitto Hawaii Co., Ltd. is a subsidiary of Nitto Kogyo Co., Ltd.

5. 1986 - No contribution.

1987 -	2/20/87	Arnold Morgado	Fundraiser $125.00
	2/28/87	John Waihee	Fundraiser $500.00
	4/10/87	Milton Holt	Fundraiser $150.00

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1988 -	3/8/88	Romy Cachola	Fundraiser $100.00
	3/31/88	John DeSoto	Fundraiser $100.00
	4/14/88	Arnold Morgado	Fundraiser $125.00
	4/20/88	John Waihee	Contribution $50.00

1989 - No contribution.

6. Takashi Niino, President.

7. Funds from Hawaii operations.

8. No Political Action Committee.

9. No.

10. Yoshio Sano, employed by this company for 12 years, has held the following positions: Accounting Manager
Administration Manager
Deputy General Manager

9404357344 2

00C 7512

GREEN, NING, LILLY, & JONES

Attorneys at Law, A Law Corporation
707 Richards Street, Suite 700, Honolulu, Hawaii 96813
(808) 528-1100

Howard R. Green
Ke-ching Ning
Michael A. Lilly
Stephen A. Jones

Lynnette T. Oka

MAILING ADDRESS
P. O. Box 3439
Honolulu, Hawaii 96801

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(808) 531-2415

90 AUG 20 PM 12:32

August 16, 1990

90 AUG 21 PM 12:03
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Mr. Michael Troy
Federal Election Commission
Room 659
999 E Street, N.W.
Washington, D.C. 20463

Re: MURs 2846 and 2892
Friends of Frank Fasi

Dear Mr. Troy:

I am writing to you as counsel on behalf of Friends of Frank Fasi.

In our telephone conversation on July 6, 1990, you requested that the campaign find out further information regarding the $500.00 contribution listed as made by International Bank of China (Count 33).

After inquiring further of the Campaign, it appeared that the real contributor may have been someone other than the Bank; I also heard that the Bank had not cashed the refund check we sent last year. I wrote to the Bank inquiring whether the check for the contribution was made on behalf of the Bank or a third party. The bank informed us that the check was issued on behalf of the Coordination Council for North American Affairs and their address is 2746 Pali Highway, Honolulu, Hawaii 96817.

Apparently, the Coordination Council was not noted on the contribution check, but should have been. The check only set forth the Bank's name and the Bank was then listed as the contributor.

Believing last year that the Bank was the contributor, the campaign tried to determine whether the Bank was a foreign national. Being unable to obtain such information, a refund check was then made to the Bank but never cashed.

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We contacted the Coordination Council which is the equivalent of the Taiwan consulate in Honolulu to further determine what was involved in the contribution. The campaign has forwarded a refund check to them. We will be forwarding a copy of the refund check to you as soon as it is obtained from the campaign. When we hear further from the Coordination Council, we will also provide you with the information that is obtained.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Lynnette T. Oka

LTO
cc: Linda Wong

94043573444

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

September 18, 1990

Gregory Chiang, Esquire
Satterlee, Stephens, Burke &
Burke
230 Park Avenue
New York, NY 10169-9200

RE: MUR 2892
International Commercial
Bank of China

Dear Mr. Chiang:

On May 1, 1990, the Federal Election Commission ("the Commission") found reason to believe that the International Commercial Bank of China ("ICBC") violated 2 U.S.C. § 441e by making a $500 campaign contribution to the Campaign of Frank Fasi committee ("the Committee"). On June 26, 1990, ICBC responded to the Commission's interrogatories by stating that it made no contribution to any political committee in Hawaii and that it has no subsidiaries located in Hawaii.

On August 16, 1990, the Commission received a response from the Committee concerning the $500 contribution. The response noted that ICBC was originally thought to be the contributor. Believing that ICBC was the contributor, and being unable to obtain information concerning the funds' permissibility, the committee refunded the contribution to ICBC. Since that time, your client apparently has informed the committee that the Coordination Council for North American Affairs was the actual contributor. The contribution was listed as being received from ICBC due to the fact that the check was drawn on the bank and the contributor's name was not on the check.

In view of this information, the Commission requires additional information from your client.

1. Please provide the Commission with a copy (front and back) of the original contribution check drawn on ICBC to the Friends of Fasi committee.

2. State the account number from which the check was drawn.

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3. Identify the name(s) on the account from which the check was drawn as well as the names of all of the individuals who exercise authority over the account.

4. Identify who signed the original check.

5. If the check is a bank check, cashier's check, money order or any other bank instrument that is not drawn directly from a customer account, identify the source of funds for the check.

6. Provide the Commission with all other documents pertaining to this transaction.

Please provide all written answers and documentation to the Commission within 15 days of the date of this letter. If you have any questions, contact Patty Reilly, the attorney assigned to this matter, at 202/376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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OGC 8012

SATTERLEE STEPHENS BURKE & BURKE
230 PARK AVENUE
NEW YORK, N. Y. 10169-0079
(212) 818-9200

47 MAPLE STREET
SUMMIT, N.J. 07901
(201) 277-2221

TELEX NO. 233437
CABLE "SATERFIELD" NEW YORK
TELECOPIER (212) 818-9606, 9607

September 26, 1990

VIA FEDERAL EXPRESS

Lawrence M. Noble, Esq.
General Counsel
Lois G. Lerner, Esq.
Associate General Counsel
Federal Election Commission
999 E Street, N.W.
Room 657
Washington, D.C. 20463

HAND DELIVERED
90 SEP 27 AM 11:29
90 SEP 28 AM 11:04
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Re: MUR 2892
International Commercial Bank of China

Dear Sir/Madam:

In response to your letter dated September 18, 1990 in connection with the above captioned matter, we are writing to provide you with the following documents and information you requested:

1. A copy (front and back) of the original contribution check.

2. The account number is 202010034173.

3. The name of the account is Coordination Council for North American Affairs, office in Honolulu.

4. The check was signed by Paul J.K. Tso and Hsiung Chao Chyun.

If you have any further questions, please do not hesitate to contact Mr. William M. Jackson or the undersigned at our New York office.

Very truly yours,

Gregory Chiang

Gregory Chiang

GC:se
Enclosures

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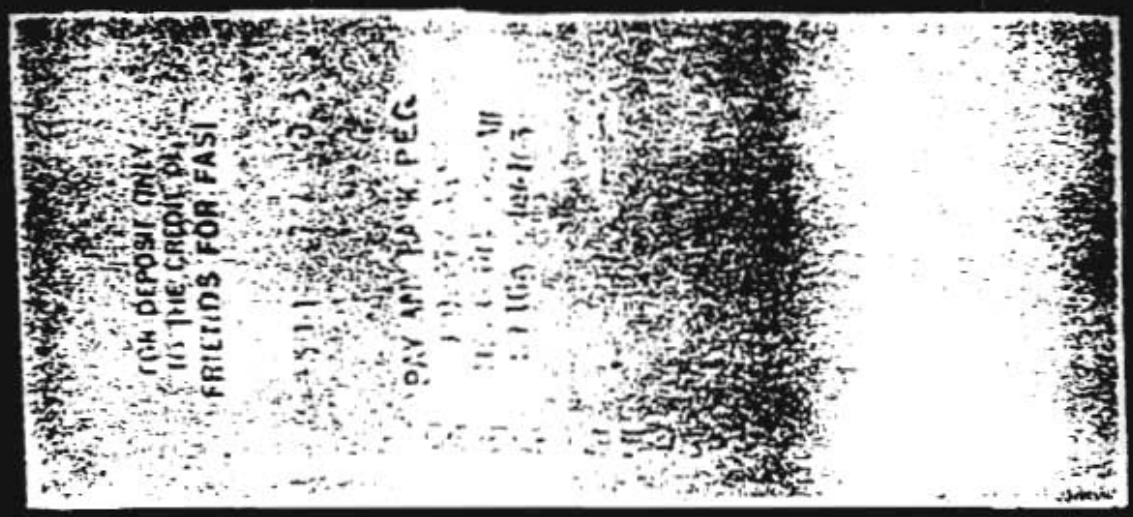


(back of the check)

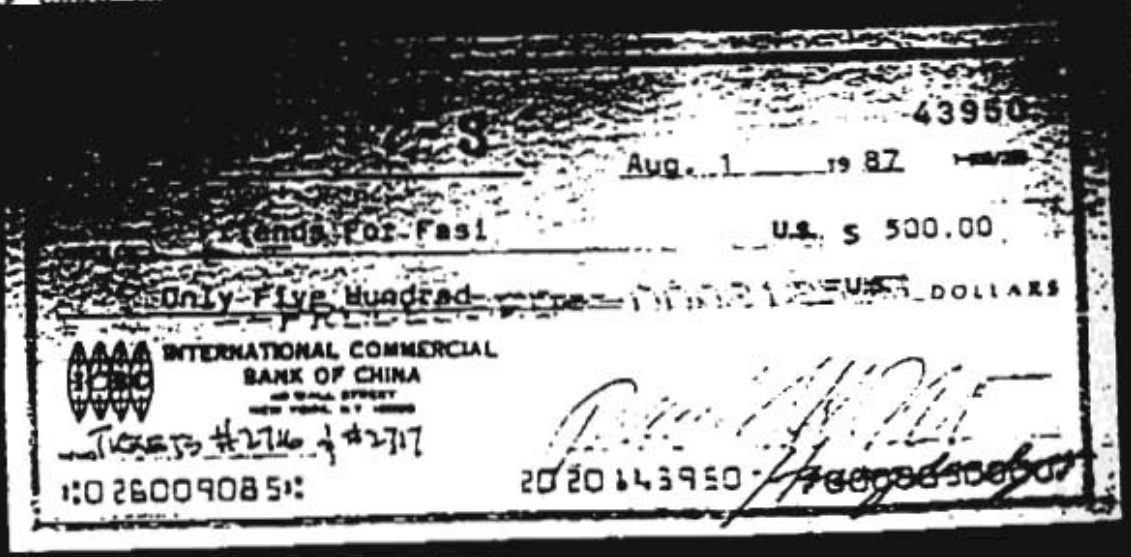
Coordination Council for
North American Affairs. office in Honolulu

Account's Name and address:

COORDINATION COUNCIL FOR NORTH
AMERICAN AFFAIRS,OFFICE IN HONOLULU
2746 PALI HIGHWAY
HONOLULU, HAWAII 96817

#3117-3

Account No. 202010034173 signed by Paul J. K. Tso and Hsiung Chao Chynn



(front of the check)

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

90 SEP 27 AM 10:46

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2892
All Nippon Airways Co. Ltd.	)	
Minami Group (USA) Inc.	)	
Tobishima Pacific, Inc.	)	
Japan Travel Bureau International, Inc.	)	
Masao Hayashi	)	
Committee of Benjamin Cayetano	)	
Citizens for Waihee	)	
David N. Kahanu	)	
Campaign for Leigh-Wai Doo	)	
Daiei Hawaii Investments	)	
Kintetsu International Express	)	
Kumagi Properties, Inc.	)	
Takayuki Mizutani	)	
Hiroshi Kobayashi	)	
Mokuleia Land Company	)	
Royal Hawaiian Country Club	)	
Y.Y. Valley Corp.	)	
Coordination Council for North American Affairs	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

The above named respondents are individuals and entities who are allegedly foreign nationals and who allegedly made contributions to State and local political campaigns in violation of Federal Election Campaign Act of 1971 as amended ("the Act"), or are recipient campaign committees. On May 1, 1990, the Commission found reason to believe the above-named respondents violated 2 U.S.C. § 441e, which prohibits foreign nationals from contributing to political campaigns. At the same time, the Commission approved sample questions to be sent to the named parties.

At this juncture, we have received pre-probable cause conciliation requests for the eighteen respondents named above.

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As discussed below, in some instances we have received sufficient information in the investigation to recommend pre-probable cause conciliation, while in other instances we are without such information. Additionally, because some of the respondents are also respondents in MUR 3004, we recommend declining pre-probable cause conciliation at this time so that we can address all violations together.

II. ANALYSIS

A. THE LAW

The Commission found reason to believe that the above-named respondents violated 2 U.S.C. § 441e. That provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a):[1]

> (1) A foreign national shall not directly or through any other person make a contribution or expressly or impliedly promise to make a contribution, or an expenditure, or expressly or impliedly promise to make a contribution or an expenditure in connection with a convention, a caucus, or a primary, general, special, or run-off election in connection with any local, State, or Federal public office.
>
> (2) No person shall solicit, accept, or receive a contribution as set out above from a foreign national.
>
> (3) A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-

---

1. These are the regulations as recently amended, in part to add section (a)(3). The amended regulations took effect on April 11, 1990, after most of the violations had occurred.

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making process of any person such as a corporation, labor organization, or political committee, with regard to such person's Federal or nonfederal election-related activities, such as decision concerning the making of contributions or expenditures in connection with election for any local, State, or Federal office or decision concerning the administration of a political committee.

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as a "foreign principal" as defined at 22 U.S.C. § 611(b), which includes the following within the definition of "foreign principal":

> ....(2) A person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

The Act further provides that for the purposes of 2 U.S.C. § 441e, a permanent resident alien shall not be considered a "foreign national." 2 U.S.C. § 441e(b)(2).

B. COMMISSION INTERPRETATION AND APPLICATION

The above-named respondents include individual and corporate entities which have contributed money to state and local campaigns, as well as State and local campaigns which may have accepted money from foreign nationals.

Foreign national corporations are flatly prohibited from making contributions to Federal, State, and local campaigns. 11 C.F.R. § 110.4(a). In making its determination regarding the legality of contributions from respondent corporations which are

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domestic subsidiaries of foreign national corporations, this Office has applied a two pronged test: (1) whether the source of the funds contributed was foreign or domestic, and (2) whether those who participated in the decision to contribute were all United States citizens or permanent resident aliens. See, A.O.s 1989-20, 1985-3 and 1981-36. In assessing contributions from respondents who are individuals, this Office has sought to determine whether those individuals were or were not foreign nationals as defined by 2 U.S.C. § 441e.

This Office has divided the above-named respondents into four categories: 1) respondents who are also named in MUR 3004; 2) individuals and corporations who, by their responses, may not make contributions under the Act; 3) respondents who provided insufficient responses to make a determination or who have not responded; and 4) respondents campaign committees for whom the status of contributors has not yet been determined. We have also included an additional section regarding the Coordination Council for North American Affairs. This Office recommends that the Commission enter into conciliation at this time with respect to the second group, and decline to enter into conciliation at this time with the other named respondents.

1. Respondents Also Named in MUR 3004

Four of the respondents requesting conciliation are also named respondents in MUR 3004 and admit making the contributions at issue in that matter. This Office will circulate a General Counsel's Report with recommendations regarding that matter shortly. In order that all violations can be addressed in one

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conciliation agreement, we will make recommendations regarding pre-probable cause conciliation at that time. Consequently, this Office recommends that the Commission deny at this time the pre-probable cause conciliation requests of Masao Hayashi[2], Minami Group (USA)[3], Japan Travel Bureau International, Inc.[4]

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2. Masao Hayashi made two personal donations to candidates, totaling $2,250.00 while residing in Hawaii on an E-1 non-immigrant visa. See, Response to Interrogatories, answer #4 (Att. 1, p. 74). Mr. Hayashi is not an American citizen nor is he a permanent resident alien. See, Response to Interrogatories, answers #2-3 (Att. 1, p. 74).

3. Minami Group (USA) Inc. is a Hawaii corporation wholly-owned by a foreign national individual. It gave $1,500.00 in contributions to two State or local candidates in Hawaii, all of which were returned.

4. Japan Travel made the following contributions to State and local candidates in Hawaii:

1/30/89	Friends of Dennis Nakasoto	$ 250.00
2/3/88	(same)	$ 250.00
2/26/87	(same)	$ 225.00
1/30/89	Friends of Randy Iwase	$ 250.00
3/1/88	(same)	$ 100.00
5/23/89	12th Annual Sen. Norman Mizuguchi "Kolepa" Shoot-Out	$ 150.00
4/6/89	Mizuguchi for Senate Golf Tours.	$ 150.00
2/6/89	Mizuguchi for Senate Comm.	$ 500.00
6/23/87	Sen. Norman Mizuguchi Golf Tourn.	$ 90.00
2/13/89	Friends of Sen. Dick Matsuura	$ 250.00
2/5/88	(same)	$ 250.00
2/23/89	Friends of Romy Cachola	$ 250.00
2/22/89	(same)	$ 250.00
2/19/88	(same)	$ 250.00
6/22/89	Romy Cachola Golf Tourn.	$ 225.00
3/6/89	Friends of Milton Holt	$1000.00
3/31/88	(same)	$ 300.00
3/17/89	Friends of Souki	$ 250.00
3/27/89	Friends of Bertha C. Kawakami (Refunded 5/31/90)	$ 250.00
3/1/88	(same) (Refunded 2/6/90)	$ 250.00
3/30/89	Friends of Tony Chang	$ 25.00
3/28/87	(same)	$ 300.00
3/31/89	Comm. to Re-elect Carol Fukunaga	$ 50.00

9404357345 3

and Daiei Hawaii Investments.[5]

2. **Individuals and Corporations Who May Not Make Contributions**

One individual admits he is a foreign national who made a prohibited contribution. Takayuki Mizutani, a non-resident alien, contributed $500 to a local campaign in Hawaii.[6] See, Att. 1, p. 161. Because Mr. Mizutani is a foreign national as defined under 2 U.S.C. § 441e, his contribution violates the Act.

9404357345 4

(Footnote 4 continued from previous page)

3/1/88	Friends of Whitney T. Anderson	$ 50.00
3/3/88	Friends of Clarice Y. Hashimoto (Refunded 12/1/89)	$ 250.00
2/27/87	Friends of Mary Jane McMurdo	$ 100.00
4/8/87	Time for Barbara Marumoto	$ 50.00
4/22/87	Friends to Re-elect Sen. Yamasaki	$ 350.00
6/23/87	Friends of Tony Kunimura	$ 200.00
8/25/87	Friends of Calvin Say	$ 150.00
3/26/86	Friends of Duke Kawasaki	$ 100.00
6/1/86	Friends of Kevin Kuroda	$ 200.00
6/10/86	(same)	$ 140.00
6/16/86	Friends of Eileen Anderson	$ 250.00
8/25/87	Friends for Fasi	$2000.00
6/23/86	Citizens for Waihee	$ 10.00
	TOTAL:	$9715.00
	Refunded:	(-$750.00)

See, Response to Interrogatories, Exhibit "B" (Att. 1, p. 52).

5. The corporation acknowledges three contributions from the complaint in this matter and four contributions alleged in the complaint in MUR 3004. See, Id., answer #7 (Att. 1, p. 119).

6. Respondent made a contribution to Citizens for Waihee. See, Response to Interrogatories, answer #4 (Att. 1, p. 163). Respondent is still in the process of checking his records to see if the contribution was refunded. See, Affidavit of Takayuki Mizutani, statement #6, (Att. 1, p. 162).

Additionally, two of the corporate respondents revealed in their response to the interrogatories that the contributions originated with a foreign national or that a foreign national had a part in making the contributions.

All Nippon Airways, a Japanese Corporation, made eleven contributions totaling $1975.00 to nine State or local candidates in Hawaii one of which was returned.[7] Because All Nippon Airways is incorporated under the laws of Japan, it is a foreign national as defined by 22 U.S.C. § 611(b)(3), and its contributions are in violation of 2 U.S.C. § 441e(a).

Tobishima Pacific, Inc. is a Hawaii corporation which is entirely owned by Tobishima Corp., a Japanese Corporation. See, Tobishima's Response to Interrogatories, answer #4 (Att. 1, p.

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7. All Nippon Airways Co., Ltd. made the following contributions to campaigns in Hawaii:

3/30/87	Sen. Fernandes Salling	$ 200.00
4/1/88	(same)	$ 50.00
4/14/87	Friends of Reb Bellinger	$ 100.00
4/4/88	(same)	$ 50.00
4/30/87	Friends of Richard Wong	$ 500.00
5/7/87	Friends of Sen. Memoir Yamasaki	$ 250.00
2/2/88	Friends of [Dance] Carpenter	$ 200.00
2/17/88	Friends of Paul T. Oshiro	$ 50.00
6/15/88	Hui O [Neil] Abercrombie	$ 25.00
3/6/89	Friends of Romy Cachola	$ 50.00
6/30/87	Friends for Fasi	$ 500.00
	(Refunded 8/7/89	--------
	TOTAL:	$1975.00
	Refunded	(-$ 500.00)

See, Response to Interrogatories, Attachments B-C (Att. 1, pp. 8-9).

This Office will make recommendations regarding these recipient committees and recipient committees named by other respondents when it has received complete responses from all respondents in this matter.

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39). The respondent admits that a Japanese national made a single $250 contribution from corporate funds to a State or local candidate in Hawaii, which was later refunded.[8] Because the decision to make the contribution was made by a foreign national, the respondent fails the two-pronged test and is in violation of 2 U.S.C. § 441e. See, A.O.s 1985-3, 1982-10, and 1989-20. Therefore this Office recommends that the Commission enter into conciliation with these respondents prior to a finding of probable cause to believe.

3. Respondents Whose Responses are Insufficient to Make a Determination or Who Have Failed to Respond to Interrogatories

Hiroshi Kobayashi has been a permanent resident alien of the United States since 1973. See, Response to Interrogatories, (Att. 1, p. 167). Thus, he is permitted to contribute to elections for any political office. The complaint in MUR 2846 alleged, however, that Mr. Kobayashi made a contribution as a conduit for a foreign national. 2 U.S.C. § 441e(b)(2). Mr. Kobayashi has not yet responded fully to the interrogatories, and thus this issue is unresolved.

Kintetsu International Express (USA), incorporated in California and a wholly-owned subsidiary of a Japanese corporation, made a single contribution to a local campaign from

8. The treasurer of the company purchased a single $250 ticket to a "Friends of Fasi" fund-raiser. The campaign subsequently returned the contribution. See, Tobishima's Response to interrogatories, answers #5-7 (Att. 1, pp. 39-40).

9404357345 6

domestic funds.[9] Because the response does not indicate the citizenship status of the decision-maker, nor of the officers and directors, there is incomplete information regarding whether a violation of the Act occurred.

Kumagi Properties, Inc., a Hawaii corporation, is a wholly-owned subsidiary of Kumagi International USA Corporation, a Texas Corporation. Kumagi Properties' response does not reveal the ownership of Kumagi International USA. See, Response to Interrogatories, answers #1, 4 (Att. 1, pp. 145-46). The decision-maker is a permanent resident alien, see, Supplemental Response (Att. 1, p. 159) and the contributions came, in part, from contributions from its parent corporation. See, Id., answer #7 (Att. 1, p. 147). Because the respondent does not reveal the owner(s) of the parent corporation, the source of funds, or the persons involved in transferring the funds to the subsidiary, it is not appropriate to conciliate at this time.

Additionally, three of the above-named respondents have not submitted answers to the questions sent to them. Royal Hawaiian Country Club, Inc., Y.Y. Valley Corporation, and Mokuleia Land Company have not responded to the interrogatories sent to them by the Commission. See, Request for Conciliation (Att. 1, pp. 169-70). In light of the information above, this Office recommends that the Commission deny respondents' requests for

9. Kintetsu made a contribution of $250 to Friends of Fasi. See, Response to Interrogatories, answers #4-7 (Att. 1, p. 136).

9404357345 7

conciliation at this time. After receiving answers to the outstanding questions, this Office will report to the Commission.

4. Respondent Campaign Committees for Whom the Status of Contributors Has Not Been Determined

The following campaign committees have requested conciliation: Campaign Committee of Benjamin Cayetano, Committee for David W. Kahanu, Campaign of Leigh-Wai Doo, and Citizens for Waihee. Factual problems are presented by these requests because the campaign committees are unable to determine the status of many of their contributors. Many respondent contributors have submitted incomplete responses or no response at all. Therefore, this Office has not been able to determine the scope of the possible violations of each of the recipient committees. Accordingly, this Office recommends that the Commission decline at this time to enter into conciliation with these committees.

5. The Coordination Counsel for North American Affairs

The Commission also found reason to believe the Coordination Counsel for North American Affairs ("CCNAA") violated 2 U.S.C. § 441e. The basis of the Commission's determination was an allegation that CCNAA, a foreign national, contributed $250 in a mayoral election. Subsequently, respondent informed this Office that it is an instrumentality of a foreign sovereign and, as such, argues that it is entitled to the immunities conferred by the Foreign Sovereign Immunities

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Act. 28 U.S.C. § 1602 et. seq.[10] At a June 28, 1990 meeting between respondent's counsel and staff, CCNAA explained its status, and asserted that the contribution in question was an isolated, unauthorized incident. Respondent also requested and received a twenty day extension of time to respond to the Commission's interrogatories.

On July 25, 1990, this Office received a response and a request for conciliation prior to a finding of probable cause to believe. The response asserts that the contribution in question was made contrary to CCNAA's policy, and that no other political contribution is known to have been made by CCNAA.

This Office has recently received information from another respondent indicating that CCNAA may have been the source of at least one other contribution. Specifically, the Friends of Fasi stated that a contribution initially considered to have been made by the International Bank of China may have been made by CCNAA. See Att. 1, p. 196. This Office is currently preparing a General Counsel's Report analyzing the issue of impact of foreign sovereign immunity in instances where violations of the F.E.C.A. may have occurred. Additionally, we are also communicating with other respondents regarding this second possible contribution made by CCNAA. In light of these circumstances, this Office recommends that the Commission

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10. CCNAA is an instrumentality of the government of Taiwan. While the United States has no official diplomatic relations with Taiwan, the Taiwan Relations Act provides that United States laws shall apply to Taiwan as they would to any other foreign national, government, or similar entity. 22 U.S.C. § 3014.

decline to conciliate at this time with CCNAA.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTIES

IV. RECOMMENDATIONS

1. Decline, at this time, to enter into conciliation with Masao Hayashi; Minami Group (USA) Inc.; Japan Travel Bureau International, Inc.; Hiroshi Kobayashi; Daiei Hawaii Investments; Kintetsu International Express; Kumagi Properties, Inc.; Mokuleia Land Company; Royal Hawaiian Country Club; Y.Y. Valley Corp.; Committee of Benjamin Cayetano; Citizens for Waihee; David N. Kahanu; Campaign for Leigh-Wai Doo; and the Coordination Counsel for North American Affairs prior to a finding of probable cause to believe.

2. Enter into conciliation with All Nippon Airways Co., Ltd.; Tobishima Pacific, Inc.; and Takayuki Mizutani prior to a finding of probable cause to believe.

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3. Approve the attached conciliation agreements.

4. Approve the appropriate letters.

Date 9/27/90

Lawrence M. Noble
General Counsel

Attachments:

1. Respondent Answers to Interrogatories
2. Conciliation Agreements

Staff Assigned: Patty Reilly

9404357346 1

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
All Nippon Airways Co. Ltd.,	)	MUR 2892
Minami Group (USA) Inc.;	)	
Tobishima Pacific, Inc.;	)	
Japan Travel Bureau International, Inc.;	)	
Masao Hayashi;	)	
Committee of Benjamin Cayetano;	)	
Citizens for Waihee;	)	
David N. Kahanu;	)	
Campaign for Leigh-Wai Doo;	)	
Daiei Hawaii Investments;	)	
Kintetsu International Express;	)	
Kumagi Properties, Inc.;	)	
Takayuki Mizutani;	)	
Hiroshi Kobayashi;	)	
Mokuleia Land Company;	)	
Royal Hawaiian Country Club;	)	
Y.Y. Valley Corp.;	)	
Coordination Council for North American Affairs.	)	

9404357346 2

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on October 1, 1990, the Commission decided by a vote of 4-0 to take the following actions in MUR 2892:

1. Decline, at this time, to enter into conciliation with Masao Hayashi; Minami Group (USA) Inc.; Japan Travel Bureau International, Inc.; Hiroshi Kobayashi; Daiei Hawaii Investments; Kintetsu International Express; Kumagi Properties, Inc.; Mokuleia Land Company; Royal Hawaiian Country Club; Y.Y. Valley Corp.; Committee of Benjamin Cayetano; Citizens for Waihee; David N. Kahanu; Campaign for Leigh-Wai Doo; and the Coordination Counsel for North American Affairs prior to a finding of probable cause to believe.

(continued)

2. Enter into conciliation with All Nippon Airways Co., Ltd.; Tobishima Pacific, Inc.; and Takayuki Mizutani prior to a finding of probable cause to believe.

3. Approve the conciliation agreements, as recommended in the General Counsel's Report dated September 27, 1990.

4. Approve the appropriate letters, as recommended in the General Counsel's Report dated September 27, 1990.

Commissioners Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioners Aikens and Elliott did not cast votes.

Attest:

10-3-90
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

9404357346 3

Received in the Secretariat: Thursday, Sept. 27, 1990 10:46 a.m.
Circulated to the Commission: Thursday, Sept. 27, 1990 4:00 p.m.
Deadline for vote: Monday, Oct. 1, 1990 4:00 p.m.

dh

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

October 19, 1990

Mr. James J. Stone
Fujiyama, Duffy & Fujiyama
Suite 2700 Pauahi Tower
Bishop Square
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 2892
Takayuki Mizutani

Dear Mr. Stone:

On May 1, 1990, the Federal Election Commission found reason to believe that your client violated 2 U.S.C. § 441e. At your request, on October 1, 1990, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If your client agrees with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Conciliation Agreement

9404357346 4

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

October 19, 1990

Mr. Albert Ogawa
Ashford & Wriston
The Guaranty Building
235 Queen Street
P. O. Box 131
Honolulu, HI 96810

RE: MUR 2892
Tobishima Pacific, Inc.

Dear Mr. Ogawa:

On May 1, 1990, the Federal Election Commission found reason to believe that your client violated 2 U.S.C. § 441e. At your request, on October 1, 1990, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If your client agrees with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Conciliation Agreement

9404357346 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 19, 1990

Mr. Herbert T. Ikazaki
Ikazaki, Devens, Lo,
Youth & Nakano
Suite 1600 Central Pacific Plaza
220 South King Street
Honolulu, HI 96813

RE: MUR 2892
All Nippon Airways Co., Ltd.

Dear Mr. Ikazaki:

On May 1, 1990, the Federal Election Commission found reason to believe that your client violated 2 U.S.C. § 441e. At your request, on October 1, 1990, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If your client agrees with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Conciliation Agreement

9404357346 6

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

October 19, 1990

Mr. Neil F. Hulbert
Hong, Iwai and Hulbert
Suite 2200 Pauahi Tower
Bishop Square
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 2892
Royal Hawaiian Country Club, Inc., Y. Y. Valley Corporation and Mokuleia Land Company

Dear Mr. Hulbert:

On May 1, 1990, you were notified that the Federal Election Commission found reason to believe that your clients violated 2 U.S.C. § 441e. On June 29, 1990, you submitted a request to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has reviewed your request and determined to decline at this time to enter into conciliation prior to a finding of probable cause to believe because additional information is necessary. To this date, the Commission has not received answers from your clients to its interrogatories sent to you on May 21, 1990. We must receive full and complete answers to the interrogatories before the Commission can consider your request for conciliation negotiations. Such information should be submitted to the Office of the General Counsel within 15 days of receipt of this letter.

At such time when the investigation in this matter has been completed, the Commission will reconsider your request to enter into conciliation prior to a finding of probable cause to believe.

9404357346 7

If you have any questions, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

9404357346 8

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

October 19, 1990

Mr. Herbert T. Ikazaki
Ikazaki, Devens, Lo, Youth
& Nakano
Suite 1600 Central Pacific Plaza
220 South King Street
Honolulu, HI 96813

RE: MUR 2892
Kintetsu International
Express (USA), Inc.

Dear Mr. Ikazaki:

On May 1, 1990, you were notified that the Federal Election Commission found reason to believe that your client violated 2 U.S.C. § 441e. On June 7, 1990, you submitted a request to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has reviewed your request and determined to decline at this time to enter into conciliation prior to a finding of probable cause to believe because additional information is necessary. In order to grant your request to enter into conciliation prior to a finding of probable cause to believe, your client must provide a sworn statement which includes the citizenship status of the decision-maker involved in making the contributions, as well as the citizenship status of the officers and directors. Such information should be submitted to the Office of the General Counsel within 15 days of receipt of this letter.

At such time when the investigation in this matter has been completed, the Commission will reconsider your request to enter into conciliation prior to a finding of probable cause to believe.

9404357346 9

If you have any questions, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

94043573470

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 19, 1990

Mr. Mervyn M. Kotake
Matsubara, Lee & Kotake
Charles R. Kendall Building
888 Mililani Street, Eighth Floor
Honolulu, HI 96813-2918

RE: MUR 2892
Hiroshi Kobayashi

Dear Mr. Kotake:

On May 1, 1990, you were notified that the Federal Election Commission found reason to believe that your client violated 2 U.S.C. § 441e. After being notified of that finding, you submitted a request to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has reviewed your request and determined to decline at this time to enter into conciliation prior to a finding of probable cause to believe because additional information is necessary. Before the Commission can grant your request to enter into conciliation prior to a finding of probable cause to believe, your client must provide a sworn statement which includes the following information:

1. a list of the contributions made by Mr. Kobayashi;

2. the source of the funds used to make the contributions, including any reimbursement of the contributions by another; and

3. the identification (including citizenship status) of any other person who participated in the decision to make each contribution.

Such information should be submitted to the Office of the General Counsel within 15 days of receipt of this letter.

At such time when the investigation in this matter has been completed, the Commission will reconsider your request to enter into conciliation prior to a finding of probable cause to believe.

9404357347 1

If you have any questions, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

9404357347 2

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

October 19, 1990

Mr. Thomas R. Sylvester
Carlsmith, Wichman, Case,
Mukai and Ichiki
1001 Bishop Street
Pacific Tower Suite 2200
Honolulu, HI 96813

RE: MUR 2892
Kumagi Properties, Inc.

Dear Mr. Sylvester:

On May 1, 1990, you were notified that the Federal Election Commission found reason to believe that your client violated 2 U.S.C. § 441e. On June 14, 1990, you submitted a request to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has reviewed your request and determined to decline at this time to enter into conciliation prior to a finding of probable cause to believe because additional information is necessary. In order to grant your request to enter into conciliation prior to finding of probable cause to believe, your client must provide a sworn statement which includes the following information:

1. identification of the owners of the parent corporation, Kumagi International USA Corporation;

2. the source of funds used in making the contributions; and

3. the decision-makers, in addition to Mr. Fahita, who were involved in transferring the funds to the subsidiary.

Such information should be submitted to the Office of the General Counsel within 15 days of receipt of this letter.

At such time when the investigation in this matter has been completed, the Commission will reconsider your request to enter into conciliation prior to a finding of probable cause to believe.

9404357347 3

If you have any questions, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

9404357347 4

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

October 19, 1990

Mr. Leigh-Wai Doo
Campaign of Leigh-Wai Doo
1188 Bishop Street, Suite 1203
Honolulu, HI 96813

RE: MUR 2892
Campaign of Leigh-Wai Doo

Dear Mr. Doo:

On May 1, 1990, you were notified that the Federal Election Commission found reason to believe that you violated 2 U.S.C. § 441e. On June 7, 1990, you submitted a request to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has considered your request and determined, because of the need to complete the investigation, to decline at this time to enter into conciliation prior to a finding of probable cause to believe.

At such time when the investigation in this matter has been completed, the Commission will reconsider your request to enter into conciliation prior to a finding of probable cause to believe.

If you have any questions, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

9404357347 5

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

October 19, 1990

Mr. Renton L. K. Nip
Foley, Maehara, Judge, Nip
& Chang
2700 Grosvenor Center
737 Bishop Street
Honolulu, HI 96813

RE: MUR 2892
Citizens for Waihee

Dear Mr. Nip:

On May 1, 1990, you were notified that the Federal Election Commission found reason to believe that your client violated 2 U.S.C. § 441e. On July 11, 1990, you submitted a request to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has considered your request and determined, because of the need to complete the investigation, to decline at this time to enter into conciliation prior to a finding of probable cause to believe.

At such time when the investigation in this matter has been completed, the Commission will reconsider your request to enter into conciliation prior to a finding of probable cause to believe.

If you have any questions, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

9404357346

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

October 19, 1990

Mr. Albert Jeremiah, Jr., Esq.
1178 Akumu Street
Kailua, HI 96734

RE: MUR 2892
David W. Kahanu Campaign Committee

Dear Mr. Jeremiah:

On May 1, 1990, you were notified that the Federal Election Commission found reason to believe that your client violated 2 U.S.C. § 441e. On June 7, 1990, you submitted a request to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has considered your request and determined, because of the need to complete the investigation, to decline at this time to enter into conciliation prior to a finding of probable cause to believe.

At such time when the investigation in this matter has been completed, the Commission will reconsider your request to enter into conciliation prior to a finding of probable cause to believe.

If you have any questions, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

24043573477

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

October 19, 1990

Mr. Colbert M. Matsumoto
Fujiyama, Duffy & Fujiyama
Suite 2700 Pauahi Tower
Bishop Square
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 2892
Benjamin J. Cayetano
Campaign Committee

Dear Mr. Matsumoto:

On May 1, 1990, you were notified that the Federal Election Commission found reason to believe that your client violated 2 U.S.C. § 441e. On June 22, 1990, you submitted a request to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has considered your request and determined, because of the need to complete the investigation, to decline at this time to enter into conciliation prior to a finding of probable cause to believe.

At such time when the investigation in this matter has been completed, the Commission will reconsider your request to enter into conciliation prior to a finding of probable cause to believe.

If you have any questions, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

9404357347 8

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

October 19, 1990

Mr. James J. Stone
Fujiyama, Duffy & Fujiyama
Suite 2700 Pauahi Tower
Bishop Square
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 2892
Minami Group (USA), Inc.
and Daiei Hawaii
Investments, Inc.

Dear Mr. Stone:

On May 1, 1990, you were notified that the Federal Election Commission found reason to believe that your clients violated 2 U.S.C. § 441e. On June 28, 1990, you submitted requests to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has reviewed your request and determined to decline at this time to enter into conciliation prior to a finding of probable cause to believe because your clients are involved in another MUR that the Commission will consider shortly.

At such time when the investigation involving your clients has been completed, the Commission will reconsider your request to enter into conciliation prior to a finding of probable cause to believe.

If you have any questions, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

9404357347 9

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

October 19, 1990

Mr. Michael K. Tanigawa
Tanigawa & Tanigawa
Suite 1550 Pacific Tower
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 2892
Masao Hayashi and
Japan Travel Bureau
International, Inc.

Dear Mr. Tanigawa:

On May 1, 1990, you were notified that the Federal Election Commission found reason to believe that your clients violated 2 U.S.C. § 441e. On June 21, 1990 and June 4, 1990, you submitted requests to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has reviewed your requests and determined to decline at this time to enter into conciliation prior to a finding of probable cause to believe because your clients are involved in another MUR that the Commission will consider shortly.

At such time when the investigation involving your clients has been completed, the Commission will reconsider your requests to enter into conciliation prior to a finding of probable cause to believe.

If you have any questions, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

9404357340

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 19, 1990

Mr. Daniel K. Mayers
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, DC 20037-1420

RE: MUR 2892
Coordination Council for
North American Affairs

Dear Mr. Mayers:

On May 1, 1990, you were notified that the Federal Election Commission found reason to believe that your client violated 2 U.S.C. § 441e. After that finding, you submitted a response including a request to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has reviewed your request and determined to decline at this time to enter into conciliation prior to a finding of probable cause to believe because additional information is necessary. Information has come to the Commission's attention concerning an additional contribution made by your client. The Friends of Frank Fasi Committee received an additional contribution of $500 from your client, by check dated August 1, 1987 on an account at the International Commercial Bank of China. Upon receipt of complete information regarding this contribution, the Commission will reconsider your request to enter into conciliation prior to a finding of probable cause to believe. Such information should be submitted to the Office of the General Counsel within 15 days of receipt of this letter.

If you have any questions, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

9404357341

06C 8432

ATTORNEYS AT LAW

Ikazaki Devens Lo Youth & Nakano

Suite 1600 Central Pacific Plaza
220 South King Street
Honolulu, Hawaii 96813
Telephone (808) 521-1456
Cable Address "Whiteacre"
Fax (808) 538-3289

* Herbert T. Ikazaki
* Paul Devens
* Richard C. Lo
* Wilfred H. C. Youth
* James A. Nakano
* Russell K. Saito

Paula Devens
James H. Q. Lee
Thomas J. Wong
John T. Hoshibata

Stanley L. Ching
Caron M. Inagaki
Harry Y. Oda
Ann S. Isobe

* A Law Corporation

RECEIVED
FEDERAL ELECTION COMMISSION
90 OCT 29 PM 12:44

October 25, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Federal Election Commission
Washington, D. C. 20463

Attention: Mr. Todd Hageman

Re: MUR 2892
Kintetsu International Express
(USA), Inc.

Gentlemen:

Reference is made to your letter of October 19, 1990 seeking a sworn statement pertaining to the citizenship of the decision maker, officers and directors of the above-named corporation. In response thereto, we herewith submit the enclosed Supplemental Affidavit which shall be deemed to supplement the record heretofore made.

The subject corporation is still desirous of disposing of the subject matter by way of conciliation. If, after you had an opportunity to review the sworn statement submitted herewith, we would appreciate your advice concerning disposition by conciliation.

If you need any further information, please contact the undersigned.

Very truly yours,

IKAZAKI, DEVENS, LO, YOUTH
& NAKANO

By Herbert T. Ikazaki
Herbert T. Ikazaki

HTI:ck
Encl.

90 OCT 30 AM 10:59

2 4 2 4 3 5 7 3 4 3 2

SUPPLEMENTAL AFFIDAVIT

STATE OF HAWAII)
: SS.
CITY AND COUNTY OF HONOLULU)

OSAMU ISHIMARU, being first duly sworn on oath, deposes and says:

1. That he is the person who executed an Affidavit pertaining to "In the Matter of Kintetsu International Express (U.S.A.), Inc., MUR 2892", dated June 8, 1990.

2. That said Affidavit was transmitted via a transmittal letter dated June 7, 1990, but mailed to the Federal Election Commission by way of certified mail, on June 8, 1990 and received by the Federal Election Commission on June 12, 1990.

3. That the affiant has been apprised of the need to submit a sworn statement pertaining to the citizenship of the officers, directors and decision makers of the corporation involved in the alleged offending political contribution made, but ultimately negated by a refund.

4. That the affiant is familiar with the response to the interrogatories submitted to the Federal Election Commission and in particular paragraph 2 of said response which sets forth the names of the officers and directors of the corporation.

2 4 0 4 3 5 7 3 4 3 3

5. That all of the officers and directors, including the affiant the decision maker, but excluding Director Herbert T. Ikazaki, are citizens of Japan.

6. That Director Herbert T. Ikazaki is a citizen of the United States of America.

7. That among all of the directors and officers set forth in paragraph 2 of the response to interrogatories, the only person who was involved in making the decision to make the political contribution was the affiant.

8. That the affiant was the only person who received the request for a political contribution and who personally made the decision to make the political contribution without the counsel of any other person.

Further affiant sayeth naught.

OSAMU ISHIMARU

Subscribed and sworn to before me this 25 day of October, 1990.

Notary Public, State of Hawaii
My commission expires: 2-92

9 4 0 4 3 5 7 3 4 8 4

0008535

HONG IWAI HULBERT & KAWANO
ATTORNEYS AT LAW
SUITE 2200, PAUAHI TOWER
BISHOP SQUARE
1001 BISHOP STREET
HONOLULU, HAWAII 96813

GEORGE S. W. HONG
DONALD K. IWAI
NEIL F. HULBERT
CAROL LEE HONG
JEFFREY C. WILK
ROY K. KAWANO
HARLAN Y. KIMURA

TELEPHONE
(808) 524-4900
FAX
(808) 528-5473

90 NOV -5 AM 10:31

October 29, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 NOV -5 PM 2:44

Lois G. Lerner, Esq.
Associate General Counsel
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Dear Ms. Lerner:

Re: MUR 2892
Mokuleia Land Company

Reference is hereby made to your letter of October 19, 1990.

In the first instance, I note what is at least possibly a miscommunication. The reference in your letter refers to Royal Hawaiian Country Club, Inc. and Y. Y. Valley Corporation, as well as Mokuleia Land Company. I do not represent Royal Hawaiian Country Club and Y. Y. Valley Corporation before the Federal Election Commission. Accordingly, I will assume that you will notify counsel for Royal Hawaiian Country Club, Inc. and Y. Y. Valley Corporation concerning your communication.

Mokuleia Land Company also objects to the apparent consolidation of all of the claims generated by Mr. Loccrichio's complaint. Your letter of October 19, 1990, is simply one example of the problem generated by the consolidation. It is my understanding that all matters before the Federal Election Commission are confidential. However, it is evident that I already know information about other parties and I suppose it is possible that the attorneys for Royal Hawaiian Country Club, Inc. and Y. Y. Valley Corporation know something about my client, Mokuleia Land Company. This kind of confusion and inadvertent disclosure of confidential information is inevitable in a consolidated matter.

I cannot agree to provide any further information on behalf of my client until such time as there can be an assurance that the confidential information will not be disseminated to other parties.

Finally, I am somewhat at a loss as to why the letter of May 21, 1990 from Lee Ann Elliott offered the possibility of conciliation which the Commission apparently had no intention of pursuing. I would appreciate an explanation.

9404357345

In anticipation of your canceling the consolidation of all of these matters and treating them separately, I have forwarded the interrogatories to my client for them to answer.

Very truly yours,

HONG IWAI HULBERT & KAWANO

By Neil F. Hulbert
Neil F. Hulbert

NFH:et

cc: Mokuleia Land Company

2404357354 3 6

OGC 8557

ASHFORD & WRISTON
ATTORNEYS AT LAW

Title Guaranty Building
235 Queen Street
P.O. Box 131
Honolulu, Hawaii 96810

TELEPHONE
(808) 524-4787
FACSIMILE
(808) 533-4945

October 29, 1990

90 NOV -5 PM 12:23

Mr. Lawrence M. Noble
General Counsel
Federal Election Commission
Washington, D. C. 20463

Re: MUR 2892
Tobishima Pacific, Inc.

Dear Mr. Noble:

In accordance with the instructions in your October 19, 1990 letter, we are returning two copies of a conciliation agreement executed by Mr. Fukuda of Tobishima Pacific, Inc. together with a check in the amount of $125.00 payable to the Federal Election Commission.

If everything is satisfactory, after execution by you, please return one fully executed copy to us.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 NOV -6 AM 11:37

Very truly yours,

Albert H. Ogawa

ALBERT H. OGAWA
For Ashford & Wriston

AHO:emh
Encs.

1351e

2 4 2 4 3 5 7 3 4 8 7

A. James Wriston, Jr.*
Robert H. Ogawa*
John Jubinski*
Gavin C.K. Leong
Jack M. Rolls, Jr.
Wayne Nassin*
Douglas W. MacDougall
James K. Mee
Kim W. Caldwell
Marlene C.Y. Au
Adrian W. Rosenhill
Paul R. Goto
Katherine P. Lloyd
Na'unanikina'u A. Kamali'i
Veronica L. Stanford
Owen H. Matsunaga
Shah J. Bento
Charles A. Price
Keith M. Yonamine
*A Law Corporation
William B. Stephenson
(1915–1964)
OF COUNSEL
Clinton R. Ashford*
Charles B. Dwight III
COUNSEL
Robert Bruce Graham, Jr.
Lani D.H. Nakazawa
M. Eleanor Herberg
KAILUA-KONA OFFICE
Kuakini Tower, Suite 208
75-5722 Kuakini Hwy.
Kailua-Kona, HI 96740
TELEPHONE 329-7706
FACSIMILE 329-7528

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Nov. 5, 1990

TWO WAY MEMORANDUM

TO: Fabrae Brunson
OGC, Docket

FROM: Philomena Brooks PB
Accounting Technician

SUBJECt: Account Determination for Funds Received

We recently received a check from Tobishima Pacific Inc., check number 2298, dated Oct. 29, 1990, and in the amount of $ 125.00. Attached is a copy of the check and any correspondence that was forwarded. Please indicate below the account into which it should be deposited, and the MUR number and name.

TO: Philomena Brooks
Accounting Technician

FROM: Fabrae Brunson FB
OGC, Docket

In reference to the above check in the amount of $ 125.00, the MUR number is 2292 and in the name of Tobishima Pacific Inc.. The account into which it should be deposited is indicated below:

__ Budget Clearing Account (OGC), 95F3875.16

X Civil Penalties Account, 95-1099.160

__ Other: _____

Fabrae Brunson
Signature

11/6/90
Date

2404357348

TOBISHIMA PACIFIC, INC.
1001 BISHOP STREET
PACIFIC TOWER, STE. 1140
HONOLULU, HI 96813

2298

60-102/1213

October 29 19 90

PAY TO THE ORDER OF Federal Election Commission $ 125.00

------One Hundred Twenty-Five & no/100---------- DOLLARS

Bank of Hawaii
MAIN BRANCH
P.O. BOX 2900
HONOLULU HAWAII 96846

FOR Penalty for election campaign

⑈002298⑈ ⑆121301028⑆ 0001⑈059564⑈

9 4 0 4 3 5 7 3 4 8 9

OOC 8589

KOBAYASHI, WATANABE, SUGITA, KAWASHIMA & GODA
ATTORNEYS AT LAW
HAWAII TOWER, 8th FLOOR
745 FORT STREET
HONOLULU, HAWAII 96813-3880
TELEPHONE (808) 544-8300

90 NOV -8 AM 10: 21

Kevin S.C. Chang*
Kale Feldman*
Alan M. Goda*
Lyle Y. Hosoda*
J. Douglas Ing*
Cheryl K. Kakazu*
James Kawashima*
Burt T. Kobayashi, Jr.*
John T. Kopaz*
Wesley H. Kondo*
Benjamin A. Kudo*
Dale W. Lee*
Ronald Y. K. Leong*
Michael A. Lorusso*
Lee R. Smith*
Kenneth Y. Sugita*
Robert T. Takahashi*
Jeffrey N. Watanabe*
Cynthia Wrogger*
Randall Y. Yamamoto*

*A Law Corporation

Jan M. L. Y. Aoki
George B. Agbar
Ferdinand G. Aranas
Wendell H. Fuji
Charles W. Gall
Roxanne K. Goo
Lyle S. Hosoda
Robert K. Ishihara
Donna Y. Kanemaru
Pamela J. Larson
Alan K. Maeda
David L. Monroy
Janssen A. Olds
Marcus B. Sierra

OF COUNSEL:
George R. Adyoshi
Burt T. Kobayashi, Sr.

November 2, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 NOV -8 PM 1:08

Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Attn: Patty Reilly

Re: Mauna Lani Resort, Inc.
MUR 2892

Dear Ms. Reilly:

By this letter, Mauna Lani Resort, Inc. would like to initiate pre-probable cause conciliation and begin negotiations to settle this case which has been pending since 1989.

Thank you.

Sincerely,

Cheryl K. Kakazu

CHERYL K. KAKAZU
for
KOBAYASHI, WATANABE, SUGITA,
KAWASHIMA & GODA

3834E

9404357349 0

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Nov. 14, 1990

TWO WAY MEMORANDUM

TO: Fabrae Brunson
OGC, Docket

FROM: Philomena Brooks PB
Accounting Technician

SUBJECt: Account Determination for Funds Received

We recently received a check from All Nippon Airways Co. LTD, check number 9472, dated Nov. 2, 1990, and in the amount of $_____. Attached is a copy of the check and any correspondence that was forwarded. Please indicate below the account into which it should be deposited, and the MUR number and name.

TO: Philomena Brooks
Accounting Technician

FROM: Fabrae Brunson FB
OGC, Docket

In reference to the above check in the amount of $ 875.00, the MUR number is 2892 and in the name of All Nippon Airways Co. Ltd. The account into which it should be deposited is indicated below:

__ Budget Clearing Account (OGC), 95F3875.16

✓ Civil Penalties Account, 95-1099.160

__ Other: _____

Fabrae Brunson
Signature

11/14/90
Date

9404357349 1

ANA

ALL NIPPON AIRWAYS CO., LTD.
ANA KALAKAUA CENTER
2155 KALAKAUA AVENUE, SUITE 712
HONOLULU, HI 96815

2472

November 02 19 90

89-101
1213

PAY TO THE ORDER OF FEDERAL ELECTION COMMISSION $ 875.00

Eight Hundred Seventy Five and no/100 Only DOLLARS

WAIKIKI BRANCH
First Hawaiian Bank
2181 KALAKAUA AVENUE
HONOLULU, HAWAII 96815

⑈002472⑈ ⑆121301015⑆ 31⑈075262⑈

ALL NIPPON AIRWAYS CO., LTD.

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.

DELUXE FORM DVC-3 V-2

DATE	DESCRIPTION	AMOUNT
11/02/90	Payment of civil penalty to the Federal Election Commission (MUR 2892)	$875.00

9404357349

90-C 8509

WILMER, CUTLER & PICKERING
2445 M STREET, N. W.
WASHINGTON, D. C. 20037-1420
TELEPHONE (202) 663-6000
FACSIMILE (202) 835-0819,
429-0003, 429-4020, 293-5020
TELEX 440230 WCPI UI
ABA NET ABA1354

4 CARLTON GARDENS
LONDON SW1Y 5AA
TELEPHONE 011 (441) 839-4466
FACSIMILE 011 (441) 839-3537
TELEX 8813918 WCP LDN

15 RUE DE LA LOI
B-1040 BRUSSELS
TELEPHONE 011 (322) 231-0903
FACSIMILE 011 (322) 230-4322

DAVID WESTIN
DIRECT LINE (202)
663-6354

November 2, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 NOV -2 PM 4:26

BY HAND

Todd Hageman, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W., 6th Floor
Washington, D.C. 20463

Re: MUR 2892
Coordination Council for North American Affairs

Dear Mr. Hageman:

The Coordination Council for North American Affairs ("CCNAA") hereby requests a thirty (30) day extension of time, through December 6, 1990, to respond to Associate General Counsel Lerner's letter of October 19, 1990, received by us on October 22, 1990. This extension of time in which to respond is necessary in order to communicate with the foreign principal and prepare an appropriate response to the questions your office has raised.

As in all prior communications with your office on this matter, nothing in this letter constitutes a waiver by CCNAA of any of its privileges and immunities or a submission to the jurisdiction of the Federal Election Commission.

Sincerely,

David Westin

cc: Mr. Mayers

9404357349 3

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

November 7, 1990

Mr. David Westin
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420

RE: MUR 2892
Coordination Council
for North American
Affairs

Dear Mr. Westin:

This is in response to your letter dated November 2, 1990, which we received on the same date, requesting an extension of 30 days until December 6, 1990 to respond to the Commission's letter of October 19, 1990. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on December 6, 1990.

If you have any questions, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Jonathan Bernstein
Assistant General Counsel

9404357349 4

80-C 8648

HONG IWAI HULBERT & KAWANO
ATTORNEYS AT LAW
SUITE 2200, PAUAHI TOWER
BISHOP SQUARE
1001 BISHOP STREET
HONOLULU, HAWAII 96813

GEORGE S. W. HONG
DONALD K. IWAI
NEIL F. HULBERT
CAROL LEE HONG
JEFFREY C. WILK
ROY K. KAWANO
HARLAN Y. KIMURA

TELEPHONE
(808) 524-4900

FAX
(808) 528-5473

90 NOV 16 AM 9:03

November 13, 1990

90 NOV 16 AM 10:21
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Mark Allen, Esq.
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Dear Mr. Allen:

Re: MUR 2892
Mokuleia Land Company
Royal Hawaiian Country Club
Y. Y. Valley Corporation

Reference is hereby made to my telephone conversation with you and Jonathan Berstein of November 11 and my letter to Ms. Lerner of October 29, 1990.

I apologize for the error concerning Royal Hawaiian Country Club, Inc. and Y. Y. Valley Corporation. In fact, I do represent those two corporations before the Federal Election Commission.

We still object to the Commission's jurisdiction over local campaign contributions and the consolidation of different respondents in the same case.

As I previously informed you, I have requested my clients to compile the information necessary to answer the interrogatories.

Very truly yours,

HONG IWAI HULBERT & KAWANO

By Neil F. Hulbert
Neil F. Hulbert

NFH:et

90043357345

OGC 8743

CARLSMITH BALL WICHMAN MURRAY CASE MUKAI & ICHIKI

ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING LAW CORPORATIONS
1001 BISHOP STREET
PACIFIC TOWER, SUITE 2200
POST OFFICE BOX 656
HONOLULU, HAWAII 96809
TELEPHONE (808) 523-2500
FAX (808) 523-0842

LOS ANGELES DOWNTOWN OFFICE
TELEPHONE (213) 955-1200
FAX (213) 623-0032

LOS ANGELES WILSHIRE OFFICE
TELEPHONE (213) 937-8999
FAX (213) 935-0493

LONG BEACH OFFICE
TELEPHONE (213) 435-5631
FAX (213) 437-3760

GUAM OFFICE
TELEPHONE (671) 472-6813
FAX (671) 477-4375

HILO OFFICE
TELEPHONE (808) 935-6644
FAX (808) 935-7975

KONA OFFICE
TELEPHONE (808) 329-6464
FAX (808) 329-9450

MAUI OFFICE
TELEPHONE (808) 242-4535
FAX (808) 244-4974

SAIPAN OFFICE
TELEPHONE (670) 322-3455
FAX (670) 322-3368

November 20, 1990

Direct Dial No.:
523-2650

Our Reference No.:

90 NOV 26 PM 12:51

VIA DHL AIR COURIER

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2892 - Kumagai Properties, Inc.

Dear Mr. Noble:

Attached are supplemental interrogatory answers responding to the three questions asked in your letter of October 19, 1990 regarding the above matter.

Mr. Hageman of your offices indicated via telephone that this response would be timely if mailed by yesterday, November 19, 1990. However, due to problems in obtaining the necessary signatures, we could not return the response until today. We apologize for the delay.

90 NOV 26 PM 3:43

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Very truly yours,

Gilbert S. Coloma-Agaran

Gilbert S. Coloma-Agaran

GCA/TRS:lmb
Enclosures

L9013098

2404357346

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2892
Kumagai Properties, Inc.	)	

SUPPLEMENTAL RESPONSE OF KUMAGAI PROPERTIES, INC. TO INTERROGATORIES FROM THE FEDERAL ELECTION COMMISSION

9404357334997

Of Counsel:

CARLSMITH BALL WICHMAN MURRAY
CASE MUKAI & ICHIKI

LAWRENCE S. OKINAGA
THOMAS R. SYLVESTER
Suite 2200, Pacific Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Tel. No. (808) 523-2500

Attorneys for Kumagai
Properties, Inc.

L9013098

SUPPLEMENTAL RESPONSE OF KUMAGAI PROPERTIES, INC. TO INTERROGATORIES FROM THE FEDERAL ELECTION COMMISSION

1. Identify the owners of Kumagai Properties, Inc.'s parent corporation, Kumagai International USA Corporation.

A. Kumagai International USA Corporation is a wholly owned subsidiary of Kumagai Gumi Co., Ltd., a Japan corporation.

2. Identify the source of funds used in making the political contributions described in response to previous Interrogatory No. 5.

A. Please see our response to previous Interrogatory No. 7. Bookkeeping records maintained by Kumagai Properties, Inc. do not allow identification of the precise source of the funds used to make the contributions. Bookkeeping records maintained by Kumagai International USA Corporation indicate only the gross amount of loans and capital contributions it made to Kumagai Properties, Inc., and do not specify any amount to be used for political campaign contributions.

3. Identify the decision-makers, in addition to Mr. Furuta, who were involved in transferring funds from Kumagai International USA Corporation to Kumagai Properties, Inc.

Mr. Furuta was the only decision-maker.

L9013098

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VERIFICATION

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

KOJI TAKEHISA, being duly sworn, states that he files this response to supplemental interrogatories as Executive Vice President for Kumagai Properties, Inc., and that in such capacity he is qualified and authorized to verify the information included therein; that he has carefully examined all the statements and matters contained in the response to interrogatories; and that such statements made and matters set forth therein are true and correct to the best of his knowledge, information and belief.

KOJI TAKEHISA

Subscribed and sworn to before me
this 14th day of November,
1990.

Notary Public
State of Hawaii

My commission expires: 8/03/1994

L.S.

L9013098

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00-C 8718

CENTRAL REALTY, LTD.

1585 KAPIOLANI BLVD. #1300, HONOLULU, HAWAII 96814
OFFICE (808) 955-8588 • FAX (808) 955-7729

90 NOV 26 AM 11:53

November 21, 1990

Mr. Mark Allen
Federal Election Commission
999 E. Street, N. W.
Washington, D.C. 20463

MUR 3004

90 NOV 25 AM 3:00

90 NOV 26 PM 1:30

Dear Mr. Allen:

Per our conversation today regarding the contribution by Central Development Corporation, I am hereby certifying that I am a fifty per cent (50%) owner of said corporation. I am a United States citizen.

The other firty per cent (50%) owner is Mr. Ichizo Nishio and he was a resident and holds a permanent VISA (Green Card).

Very truly yours,

Aki Mizushima

AM:1

State of Hawaii)
) ss
County of Honolulu)

Before me personally appeared Aki Mizushima to me well known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that he executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this 21 day of Nov., 1990.

(Notary Seal)

Kathy Kunak
Notary Public
My commission expires: 7-19-93

2404357350 0

In Hawaii, it's Central Realty

OGC 8862

WILMER, CUTLER & PICKERING
2445 M STREET, N. W.
WASHINGTON, D. C. 20037-1420
TELEPHONE (202) 663-6000
FACSIMILE (202) 828-0819, 429-0803, 429-4930, 293-9828
TELEX 440230 WCPI UI
ABA NET ABA1354

4 CARLTON GARDENS
LONDON SW1Y 5AA
TELEPHONE 011 (441) 839-4466
FACSIMILE 011 (441) 839-3537
TELEX 8813918 WCP LON

15 RUE DE LA LOI
B-1040 BRUSSELS
TELEPHONE 011 (322) 231-0803
FACSIMILE 011 (322) 230-4322

DAVID WESTIN
DIRECT LINE (202)
663-6354

December 6, 1990

90 DEC -6 PM 12: 50
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

9404357350 1

BY HAND DELIVERY

Lawrence M. Noble, Esq.
General Counsel
Jonathan Bernstein, Esq.
Assistant General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2892

Dear Sirs:

We write on behalf of our client, the Coordination Council for North American Affairs ("CCNAA"), in response to your letter of October 19, 1990, concerning the above-captioned matter. In that letter, you ask for further information concerning a contribution of $500 allegedly made by the CCNAA by check dated August 1, 1987, drawn on an account at the International Commercial Bank of China.

Without in any way waiving the immunity of CCNAA as the recognized instrumentality representing Taiwan (Republic of China) as set forth in our letter to you of July 25, 1990, in this matter (which we incorporate by reference in this submission), we have been authorized by CCNAA to represent to the FEC our understanding as the lawyers for the CCNAA of the facts surrounding the incident referred to in your October 19 letter. We understand that, as your information indicates, an employee of the CCNAA in the Honolulu office did make a $500.00 payment on August 1, 1987, for tickets to a reception in honor of Mr. Frank Fasi, the incumbent Mayor of Honolulu. The CCNAA employee purchasing the tickets in 1987, Mr. Paul J.K. Tso, was the same employee identified in our letter to you of July 25, 1990, as having purchased a single ticket for a similar reception the next year. We understand that CCNAA policy requires that two employees sign all checks, and Mr. Hsiung Chao Chyun was the required second employee in the Honolulu office who signed the checks in both 1987 and 1988. It appears that the receptions for Mr. Fasi were annual, social events, and Mr. Tso did not understand them to be connected with any political campaign when

he was solicited to purchase the tickets. Different CCNAA accounts were used because of the different amounts involved (the International Commercial Bank of China account being reserved for larger amounts). We further understand that a thorough review of the records of the CCNAA office in Honolulu reveals no other payments to the campaign of Mr. Fasi or any other candidate for political office. Our understandings of other CCNAA activities and policies remain as we set them out in our letter to you of July 25, 1990.

In light of the foregoing, together with our submission to you of July 25, 1990, we respectfully renew our request that the Commission agree to enter into pre-probable cause conciliation looking toward a Conciliation Agreement along the lines set out in our July 25 letter.

Sincerely,

David Westin

9404357350 2

06C8901

#6
95
Frank Passi

PAUL, JOHNSON, ALSTON & HUNT

ATTORNEYS AT LAW A LAW CORPORATION

HONOLULU OFFICE
(808) 524-1212
Suite 1300, Pacific Tower
1001 Bishop Street
Post Office Box 4438
Honolulu, Hawaii 96812-4438
Cable: PACIFICLAW
Telex: PACLAW 634377
FAX (808) 524-4591
FAX (808) 528-1654

MAUI OFFICE
(808) 242-6644
101 H G E A Building
2145 Kaohu Street
Post Office Box 870
Wailuku, Hawaii 96793-0870
FAX (808) 244-9775

CONFIDENTIAL
SETTLEMENT COMMUNICATION

December 4, 1990

90 DEC 10 AM 11:18

Lois G. Lerner, Esq.
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2892

Dear Ms. Lerner:

I am writing on behalf of Yasuo Yasuda and Tetsuo Yasuda to request an early opportunity to negotiate a resolution of this matter, insofar as it affects my clients.

The basic facts are not in dispute; I will be happy to discuss them with you when we meet. Essentially, however, it appears that on the strength of advice from local representatives (including attorneys), Hawaii-based employees of YY Valley Corporation (which is owned by my clients) decided to use corporate funds to make the contributions which are part of this investigation. My clients--who live in Japan, speak no English, and have no day-to-day involvement with the Hawaii company's operations--were not involved in the decision to make the contributions. Moreover, they had no idea that the Federal Election Commission might claim jurisdiction over local election contributions, much less that they or their company might be accused of wrongdoing by your agency.

90 DEC 10 PM 4:13

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

My clients are embarrassed by this dispute, and they would like to see it resolved without further delay. However, because of ongoing civil litigation between my clients and others who would distort and misuse the results of these proceedings, they should be resolved without handicapping my clients' position in that litigation. It would not seem to be necessary or useful to develop a detailed record, which is not necessary to reach a mediated settlement.

HONOLULU James T. Paul, David A. Johnson, Paul Alston, William S. Hunt, Corey Y. S. Park, Shelby Anne Floyd, Louise K. Y. Ing, Sheryl L. Nicholson, Ellen Godbey Carson, Robyn B. Chun, Everett S. Kaneshige, Elizabeth Kent, Mei Nakamoto, Bruce S. Nobonikawa, Peter C. Hseih, Judy A. Tanaka
MAUI Dennis Niles, William M. McKeon, Judith L. Neustadter, Joanne V. Louie

I would like to meet with you, at your convenience, to discuss how we can best proceed.

Very truly yours,

PAUL ALSTON

PA:bh/4985C

cc: Clients

2404357350 4

RECEIVED
FEDERAL ELECTION COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION 1:01

In the Matter of	)	MUR 2892
	)	
All Nippon Airways Co., Ltd.	)	
Tobishima Pacific, Inc.	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached are two conciliation agreements signed by Shinichi Sato, the General Manager of All Nippon Airways Co., Ltd.; and Tetsuo Fukuda, General Manager of Tobishima Pacific, Inc., respectively. See Attachments 1 and 2.

The attached agreements contain no changes from the agreements approved by the Commission on October 1, 1990. Therefore, this Office recommends that the Commission accept the attached conciliation agreements with All Nippon Airways Co., Ltd. and Tobishima Pacific, Inc. Checks for the respective civil penalties have been received.

II. RECOMMENDATIONS

1. Accept the attached conciliation agreements with All Nippon Airways Co., Ltd. and Tobishima Pacific, Inc.

2. Close the file as it relates to these respondents.

3. Approve the appropriate letters.

12/4/90
Date

Lawrence M. Noble
General Counsel

Attachments
1. All Nippon Airways Co., Ltd. signed conciliation agreement

2. Tobishima Pacific, Inc. signed conciliation agreement

9404357505

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2892
All Nippon Airways Co., Ltd.	)	
Tobishima Pacific, Inc.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on December 6, 1990, the Commission decided by a vote of 5-0 to take the following actions in MUR 2892:

1. Accept the conciliation agreements with All Nippon Airways Co., Ltd. and Tobishima Pacific, Inc., as recommended in the General Counsel's Report dated December 4, 1990.

2. Close the file as it relates to these respondents.

3. Approve the appropriate letters, as recommended in the General Counsel's Report dated December 4, 1990.

Commissioners Aikens, Elliott, Josefiak, McGarry, and Thomas voted affirmatively for the decision; Commissioner McDonald did not cast a vote.

Attest:

12-6-90
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Tues., December 4, 1990 1:01 p.m.
Circulated to the Commission: Tues., December 4, 1990 4:00 p.m.
Deadline for vote: Thurs., December 6, 1990 4:00 p.m.

dh

9404357506

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 14, 1990

Mr. Herbert T. Ikazaki
Ikazaki, Devens, Lo,
Youth & Nakano
Suite 1600 Central Pacific Plaza
220 South King Street
Honolulu, HI 96813

RE: MUR 2892
All Nippon Airways
Co., Ltd.

Dear Mr. Ikazaki:

On December 6, 1990, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your client's behalf in settlement of a violation of 2 U.S.C. § 441e, a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter as it pertains to your client.

This matter will become a part of the public record within 30 days after it has been closed with respect to all other respondents involved. If you wish to submit any factual or legal materials to appear on the public record, please do so within ten days. Such materials should be sent to the Office of the General Counsel. Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

9404357507

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Conciliation Agreement

9404357350 8

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2892
All Nippon Airways Co. Ltd.	)	

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Anthony Locricchio, Victoria Creed, Karin Kosoc, and Donna Wong. The Federal Election Commission ("Commission") found reason to believe that All Nippon Airways Co., Ltd. ("Respondent") violated 2 U.S.C. § 441e.

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Respondent, All Nippon Airways Co., Ltd., is a for-profit corporation which is incorporated in Japan.

2. Shinichi Sato is the General Manager of All Nippon Airways Co., Ltd. in Hawaii.

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3. Respondent falls within the definition of "foreign national" as defined in 2 U.S.C. § 441e(b).

4. Foreign nationals are prohibited from contributing money, or any other thing of value, to a candidate for any political office, including any Federal, State, or local office, either directly or through any other person pursuant to 2 U.S.C. § 441e(a) and 11 C.F.R. § 110.4(a).

5. Respondent made contributions to the campaigns of the following State and local races in Hawaii:

3/30/87	$200.00	State Senator Fernandes Salling
4/1/88	$ 50.00	State Senator Fernandes Salling
4/12/87	$100.00	State Representative Reb Bellinger
4/4/88	$ 50.00	State Representative Reb Bellinger
4/30/87	$500.00	State Senator Richard Wong
5/7/87	$250.00	State Senator Mamoru Yamasaki
6/30/87	$500.00	Mayor Frank Fasi (REFUNDED)
2/2/88	$200.00	Mayor Dante Carpenter
2/17/88	$ 50.00	State Representative Paul Oshiro
6/15/88	$ 25.00	Neil Abercrombie
3/6/89	$ 50.00	State Representative Romy Cachola

V. Since January of 1986, respondent made a total of eleven contributions, totaling $1975.00, in violation of 2 U.S.C. § 441e(a).

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of eight hundred and seventy-five dollars ($875.00), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with

9404357310

this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

LMNoble (JH2)
Lawrence M. Noble
General Counsel

12-14-90
Date

FOR THE RESPONDENT:

Shinichi Sato
Shinichi Sato
General Manager

Nov. 5, 1990
Date

9404357351

FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

December 14, 1990

Mr. Albert Ogawa
Ashford & Wriston
Title Guaranty Building
235 Queen Street
P.O. Box 131
Honolulu, HI 96810

RE: MUR 2892
Tobishima Pacific, Inc.

Dear Mr. Ogawa:

On December 6, 1990, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your client's behalf in settlement of a violation of 2 U.S.C. § 441e, a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter as it pertains to your client.

This matter will become a part of the public record within 30 days after it has been closed with respect to all other respondents involved. If you wish to submit any factual or legal materials to appear on the public record, please do so within ten days. Such materials should be sent to the Office of the General Counsel. Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

2 4 0 4 3 5 7 3 5 1 2

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Conciliation Agreement

74043573513

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2892
Tobishima Pacific, Inc.	)	

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Anthony Locricchio, Victoria Creed, Karin Kosoc, and Donna Wong. The Federal Election Commission ("Commission") found reason to believe that Tobishima Pacific, Inc. ("Respondent") violated 2 U.S.C. § 441e.

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Respondent, Tobishima Pacific, Inc. is a for profit corporation, incorporated in Hawaii, and is a wholly owned subsidiary of Tobishima Corporation, which is incorporated in Japan.

9404357514

2. Tetsuo Fukuda is the General Manager of Tobishima Pacific, Inc.

3. Respondent made a contribution of $250.00 to Friends for Fasi on or about September 4, 1987. The contribution was refunded on August 25, 1989.

4. Foreign nationals are prohibited from contributing money, or any other thing of value, to a candidate for any political office, including Federal, State, or local office, either directly or through any other person, pursuant to 2 U.S.C. § 441e(a) and 11 C.F.R. § 110.4(a).

5. Respondent's contribution either originated with, or was under the control of a foreign national as defined in 2 U.S.C. § 441e(b).

V. Respondent made a contribution of $250.00 to a campaign for political office, in violation of 2 U.S.C. § 441e(a).

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of one hundred and twenty-five dollars ($125.00), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

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VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

LM Noble (LP)
Lawrence M. Noble
General Counsel

12-14-90
Date

FOR THE RESPONDENT:

Tetsuo Fukuda
General Manager

Oct. 25, 1990
Date

9404357351 6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Dec. 18, 1990

TWO WAY MEMORANDUM

TO: Fabrae Brunson
OGC, Docket

FROM: Philomena Brooks PB
Accounting Technician

SUBJECt: Account Determination for Funds Received

We recently received a check from Takayuki Mizutani, check number 0763, dated 10/30/90, and in the amount of $ 250.00. Attached is a copy of the check and any correspondence that was forwarded. Please indicate below the account into which it should be deposited, and the MUR number and name.

TO: Philomena Brooks
Accounting Technician

FROM: Fabrae Brunson FB
OGC, Docket

In reference to the above check in the amount of $_____, the MUR number is 2892 and in the name of Takayuki Mizutani. The account into which it should be deposited is indicated below:

✓ Budget Clearing Account (OGC), 95F3875.16

__ Civil Penalties Account, 95-1099.160

__ Other: _____

Fabrae Brunson
Signature

12/12/90
Date

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9 4 0 4 3 5 7 3 5 1 8 0763

TAKAYUKI MIZUTANI
C/O DAIEI (USA), INC.
801 KAHEKA STREET
HONOLULU, HAWAII 96814

Oct. 30 19 90

50-157/1213

PAY TO THE ORDER OF Federal Election Commission $ 250.00

Two hundred fifty and no cents DOLLARS

Central Pacific Bank
MAIN BRANCH
220 S. King St.,
Honolulu, Hawaii 96813

FOR HUR 2892

Takyuki Mizutani

[redacted]

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 13, 1990

Stanley D. Suyat, Esq.
Carlsmith, Wichman, Case, Mukai, and Ichiki
1001 Bishop Street
Pacific Tower, Suite 2200
Honolulu, HI 96813

RE: MUR 2892
Central Pacific Bank
Political Action Committee

Dear Mr. Suyat:

On May 1, 1990, the Federal Election Commission found that there is no reason to believe your client, Central Pacific Bank Political Action Committee, violated 2 U.S.C. § 441e and closed its file in this matter as it pertains to your client.

In furtherance of its investigation of this matter, the Commission has approved the enclosed questions. Please send the responses to the Office of the General Counsel within twenty days. The Commission does not consider your client to be a respondent, but rather a witness only.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire matter is closed.

If you have any questions, please contact Mark Allen, the attorney assigned to this matter, at (800) 424-9530.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure

9404357519

INTERROGATORIES TO CENTRAL PACIFIC BANK

1. The following persons listed their addresses as in care of Central Pacific Bank. For each person listed, provide the address and telephone number (home and business) and the occupation of such person.

Hiroaki Fushimi
Shoichi Kaneda
Itsuo Koshiba
Eiman Yamamoto
Seinosuke Yoshida

2. State whether each person maintains an account with Central Pacific Bank.

3. State whether each person was employed by Central Pacific Bank. If so, list the dates of employment and all positions held.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

January 11, 1991

Neil F. Hulbert, Esquire
Hong, Iwai and Hulbert
1001 Bishop Street
Honolulu, HI 96813

RE: MURs 2846 and 2892
Yoshinori "Ken" Hayashida

Dear Mr. Hulbert:

On April 17, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on May 1, 1990 found that there is reason to believe Yoshinori "Ken" Hayashida violated 2 U.S.C. § 441e, a provision of the Act. Due to an error in processing, on May 17, 1990 the Commission sent you a letter stating that the Commission found no reason to believe that Yoshinori "Ken" Hayashida violated 2 U.S.C. § 441e. Please find enclosed a copy of the Certification evidencing the Commission's reason to believe finding. (The redacted portions do not relate to the allegations against Mr. Hayashida). Also on May 1, 1990, the Commission determined to merge MUR 2846 with MUR 2892. You should now refer to this matter as MUR 2892. The Factual and Legal Analysis, which formed a basis for the Commission's finding, accompanied the May 17, 1990 letter and a copy is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your client. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Please also submit answers to the questions which accompanied the May 17, 1990 letter and are attached for your information. Where appropriate, statements should be submitted under oath.

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In the absence of any additional information demonstrating that no further action should be taken against your client, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Mark Allen, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

John Warren McGarry

John Warren McGarry
Chairman

Enclosures
Certification
Questions
Factual & Legal Analysis

9404357352 2

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of [redacted]	))))	MURs 2846 and 2892

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on May 1, 1990, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions with respect to MURs 2846 and 2892:

1. Merge MUR 2846 with MUR 2892.
2. [redacted]
3.
4.

(continued)

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5. Find reason to believe [redacted] Yoshinori "Ken" Hayashida violated 2 U.S.C. § 441e.

6. [redacted]

7. [redacted]

8. [redacted]

(continued)

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9.

10.

[redacted]

(continued)

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11. [redacted]

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

May 3, 1990
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2892
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Yoshinori "Ken" Hayashida

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within fifteen days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizen or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

To: Yoshinori "Ken" Hayashida

1. State your name, address (home and business), telephone number (home and business) and occupation.

2. Your response in MUR 2846 stated that the funds contributed by you were "funds over which [you] had direct control and the right to use for [your] own personal purposes." Identify the source of these funds, including but not limited to, their location, the account they are in, the account number, and where the funds originated.

3. Identify all persons with access to this account.

4. List all contributions (date, amount, recipient) made by you from this account to federal, state and local elections.

5. List all persons who participated in the decision to make each contribution noted above.

The Commission requests the following documents: a copy of your green card, copies of all checks or receipts for contributions you were required to list in response to interrogatory 4.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Yoshinori "Ken" Hayashida MUR: 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on April 11, 1989 (MUR 2846), alleging that thirty persons, as foreign nationals, impermissibly contributed to state elections in violation of 2 U.S.C. § 441e. The majority of these persons were alleged to have contributed to Citizens for Waihee, a state committee of the governor of Hawaii. On May 30, 1989, this Office received a second complaint (MUR 2892) alleging approximately sixty alleged foreign nationals had impermissibly contributed to the Campaign of Frank Fasi, the mayor of Honolulu. The Commission determined to merge these two matters.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaints is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

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The prohibition is also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) that states:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's

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jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates", terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

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they argue the regulation at 11 C.F.R. 110.4 is overly broad.[3]

As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office", defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentation of campaign authority).

sections of the Act dealing solely with federal elections.[5]

The legislative history of § 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to Section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this language is similar if not broader", than § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office", and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113-114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress's intent to reach beyond federal elections. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"),

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also, Brock v. Peabody Coal Co., 822 F.2d 1134,

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(Footnote 6 continued from previous page)
52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S..C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress's concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore,

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are

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acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

These matters involve both individuals and corporations who

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are said to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including individuals, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. In its advisory opinions, the Commission has addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contribution. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL AND LEGAL ANALYSIS

An ambiguity is presented regarding the response of Yoshinori "Ken" Hayashida. The complaint alleged Mr. Hayashida made contributions with the assets of foreign nationals. See MUR 2846 Complaint at pp. 3-4 and 56-57. The response asserts that the funds contributed by this respondent were "funds over which he had direct control and the right to use for his own personal purposes." Because the respondent has failed to address whether a foreign national was the source of these funds, and because his response implies that the funds may be other than strictly personal (i.e. possibly from a corporate expense account), there is reason to believe this individual violated section 441e.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 25, 1991

Mr. Itsuo Koshiba
581 Kamoku Street, #506
Honolulu, HI 96826

RE: MUR 2892

Dear Mr. Koshiba:

The Federal Election Commission received a complaint which alleges that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2892. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Todd Hageman, the staff member assigned to this matter at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner
Associate General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 25, 1991

Mr. Hiroaki Fushime
3-4-7 Shimoochiahi
Shinjuku-Ku
Tokyo, Japan

RE: MUR 2892

Dear Mr. Fushime:

The Federal Election Commission received a complaint which alleges that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2892. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner
Associate General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

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SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR # 3004 & 2892
DATE MUR 3004 COMPLAINT RECEIVED BY OGC: November 13, 1989
DATE OF NOTIFICATION TO RESPONDENTS: November 20, 1989
STAFF MEMBER: Mark Allen

COMPLAINANTS: Maunawili Community Association
Victoria S. Creed
Donna Wong
Karen L. Kosoc

RESPONDENTS: Ala Moana Hotel
(and 26 other Hawaii businesses)
Campaign of Rep. Peter K. Apo
(and 22 other state candidates)
GEM of Hawaii PAC
Pacific Resources PAC
Mauna Lani Resort Inc. PAC

RELEVANT STATUTE: 2 U.S.C. § 441e

RELEVANT REGULATION: 11 C.F.R. § 110.4(a)

INTERNAL REPORTS CHECKED: MUR 2846/2892 GC Reports

FEDERAL AGENCIES CHECKED: None

I. BACKGROUND

The Office of the General Counsel received a complaint from the Maunawili Community Association, Victoria S. Creed, Donna Wong, and Karen L. Kosoc alleging that thirty persons, as foreign nationals, impermissibly contributed to twenty-three candidates in state elections in violation of 2 U.S.C. § 441e. To date, all but two respondents in this matter have submitted responses to the

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complaint.[1] Respondents are listed at the last page of this report, along with the attachment page numbers (referred to infra as "Att. ___") at which each response appears. This Office recommends merging MUR 3004 with MUR 2892, a related matter involving a number of the same respondents.[2]

II. LEGAL ANALYSIS

For this Office's Legal Analysis, see the MUR 2892 General Counsel's Report dated May 1, 1990. This Analysis will be included in the Factual and Legal Analyses (Att. 406).

III. FACTUAL ANALYSIS

The respondent corporate entities all made contributions to one or more of the respondent candidate committees noted in this matter. The contributions are listed by contributor at Attachment A-1. Many respondents also addressed arguments presented above. Fifteen of the corporate respondents in this matter are also respondents in MUR 2892. On May 1, 1990, the Commission found no reason to believe GEM of Hawaii PAC violated 2 U.S.C. § 441e. Also on that date, the Commission found reason to believe the other fourteen overlapping respondents violated section 441e: Azabu Realty, Inc., Azabu U.S.A. Corporation, Daiei Hawaii Investments, Inc., Hasegawa Komuten (Hawaii), Inc. (now known as Haseko (Hawaii), Inc.), Hawaii Omori Corporation, Japan Travel

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1. These two respondents, Horita Corp. and Kazuo Totoki, Ltd., are described in a candidate campaign's response, infra.

2. Ordinarily, two matters are merged to the higher MUR number, but due to the resulting number of notifications, this Office recommends that the Commission merge these two matters to the lower MUR number.

Bureau International, Inc., Masao Hayashi,[3] Mauna Lani Resort PAC, Minami Group (USA) Inc., Mokuleia Land Company, Ohbayashi Hawaii Corporation, Otaka, Inc., Sankyo Tsusho Co., Ltd., and Taiyo Hawaii Company, Ltd. Most of these respondents have requested pre-probable cause conciliation, which the Commission has denied up to this point. This report recommends that the Commission now accept several of these respondents' requests.

The factual analysis addresses the respondents in six groups in two major categories:

(A) corporate respondents
-- overlapping with MUR 2892
-- proving domestic ownership
-- satisfying the two-prong test
-- failing to satisfy two-prong test

(B) state candidate committee respondents
-- MUR 3004 complaint
-- internally generated based on MUR 2892 responses

A. CORPORATE ENTITIES

As discussed in the legal analysis, in its advisory opinions the Commission has applied a two pronged test to determine whether a domestic subsidiary of a foreign national may contribute to state and local elections. In general, such contributions are permissible provided that the foreign national parent is not the source of funds and persons participating in the decision-making process regarding such contributions are not foreign nationals. This section first considers the corporate entities that are also respondents in MUR 2892. Next this section considers MUR 3004

3. The complaint in MUR 3004 did not allege Masao Hayashi as an individual contributor, but rather named Masao Hayashi Japan Travel International. Masao Hayashi submitted a response. See infra.

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corporate entities that prove domestic ownership. Then this section addresses corporate respondents that satisfy the two pronged test. Finally, this section addresses those corporate respondents who fail to satisfy the test.

1. ENTITIES ALSO RESPONDENTS IN MUR 2892

Of the entities against whom the Commission found reason to believe in MUR 2892, two appear not to have violated the Act. This section treats these two contributors first and then the remaining thirteen MUR 2892/3004 respondents in alphabetical order.

Ohbayashi Hawaii Corporation requested pre-probable cause conciliation[4] and submitted an RTB response indicating that it is a wholly-owned subsidiary of a foreign corporation with a mixed foreign-U.S. citizen board of directors (Att. 371). Funds derived from domestic operations were contributed by a permanent resident alien on the recommendation of a U.S. citizen. Ohbayashi thus satisfies the two-prong test and this Office recommends that the Commission find no reason to believe that Ohbayashi Hawaii violated 2 U.S.C. § 441e regarding its contribution to the Campaign of Richard Leong in MUR 3004.[5] In addition, this Office is preparing the appropriate brief that will recommend that the Commission find no probable cause to believe that Ohbayashi Hawaii Corp. violated section 441e regarding its contributions in

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4. The Commission denied this request on June 27, 1990, pending Ohbayashi's response to the discovery requests.

5. The Campaign of Richard Leong returned this check in February, 1989, several months before the complaint in this matter was filed (Att. 184).

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MUR 2892.

The RTB response of Otaka, Inc. notes that it is a domestic corporation owned by two foreign corporations (Att. 380). A U.S. citizen, Otaka's president, authorizes all of the company's political contributions, and the funds used for the contributions were all generated by Otaka from its U.S. operations. Therefore, this Office recommends that the Commission find no reason to believe that Otaka, Inc. violated 2 U.S.C. § 441e regarding its MUR 3004 contributions. In addition, this Office is preparing the appropriate brief that will recommend that the Commission find no probable cause to believe that Otaka, Inc. violated section 441e regarding its contributions in MUR 2892.

Azabu Realty, Inc. and Azabu U.S.A. Corporation submitted a joint response to the RTB finding in MUR 2892 (Att. 231). Both entities' requests for pre-probable cause conciliation, submitted before their substantive responses to the Commission's discovery requests, were rejected by the Commission on June 27, 1990. Their response indicates that Azabu Realty merged into Azabu U.S.A. Corporation on April 2, 1990. These respondents are incorporated in Hawaii and owned by a foreign corporation. The funds used for the contributions were derived from domestic operations. The individual identified as deciding for both Azabu entities to whom to make contributions was a permanent resident alien who became a naturalized U.S. citizen in August, 1989.[6] The officers and

6. An individual must have permanent resident alien status for five years in order to become a naturalized U.S. citizen. See 8 U.S.C. § 1427.

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directors of both Azabu entities are mostly foreign nationals. One of Azabu U.S.A.'s six directors is a U.S. citizen. Four of its nine officers are U.S. citizens or permanent resident aliens. One of Azabu Realty's six directors is a U.S. citizen, as is one of its six officers. Given the striking imbalance in the citizenship of these entities' directors and of Azabu Realty's officers, this Office questions the role of the asserted contribution decision-maker, and proposes to ask more questions in order to detail the decision-making process.[7] This Office therefore recommends that the Commission find reason to believe that both Azabu Realty, Inc. and Azabu U.S.A. Corporation violated 2 U.S.C. § 441e regarding their contributions in MUR 3004.[8]

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7. See the RTB response of Mauna Lani Resort PAC as an example of a detailed description of an entity's contribution decision-making process (Att. 318).

8. According to Azabu U.S.A. Corporation, it owns Ala Moana Hotel, a separate named respondent in MUR 3004 (Att. 240). In addition to Ala Moana Hotel's single contribution alleged in the complaint (Complaint, page 2), Azabu's RTB response states that Ala Moana made a total of ten contributions to state and local campaigns, for a total of $3,325. The response identifies a naturalized U.S. citizen who made the decisions regarding Ala Moana's contributions until May 1988, and a permanent resident alien who has made the decisions since that time. Ala Moana Hotel itself filed a response to the complaint in MUR 3004 (Att. 1). Ala Moana acknowledges the $1000 contribution to the Friends of Gerry Hagino alleged in the complaint, and notes that it is a Hawaii corporation; that the contribution in the complaint consisted of funds earned by Ala Moana in Hawaii; and that the contribution decision was made solely in Hawaii by the officers of Ala Moana. In contrast to the Azabu response, the Ala Moana response suggests that the decision to make the contribution in the complaint was made by more than one individual. Moreover, the response does not state the nationality of Ala Moana's officers and directors. Therefore, this Office recommends that the Commission find reason to believe that Ala Moana Hotel violated 2 U.S.C. § 441e by making the contribution asserted in MUR 3004 and the contributions listed in Azabu U.S.A. Corporation's MUR 2892 RTB response.

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The RTB response of Daiei Hawaii Investments, Inc. indicates that it is a Hawaii corporation owned by Daiei (USA), Inc., a respondent in MUR 3004, which is in turn owned by a foreign corporation (Att. 251).[9] The funds for Daiei Hawaii Investments' contributions came from domestic sources. The contribution decisions were made by the board of directors, half of whose members are foreign nationals. This activity on the part of foreign nationals indicates that the two-prong test was not satisfied. Included with this response was a request for pre-probable cause conciliation, which the Commission rejected on October 1, 1990 so that this Office could consider Daiei's contributions in both MUR 2892 and MUR 3004.[10] This Office now recommends that the Commission find reason to believe that Daiei Hawaii Investments, Inc. violated 2 U.S.C. § 441e regarding its contribution in MUR 3004 and accept Daiei's request for pre-probable cause conciliation regarding its contributions in both MUR 2892 and MUR 3004.

In Advisory Opinion 1989-29, the Commission found that the contributions of GEM of Hawaii Political Action Committee, a Hawaii state committee of a domestic subsidiary of a foreign national, were legal because they satisfied the two-pronged test.

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9. Daiei Hawaii Investments is identified in the MUR 3004 complaint as well as in the response to the complaint simply as "Daiei Hawaii" (Att. 23). Because Daiei Hawaii Investments' RTB response lists the MUR 3004 contributions of "Daiei Hawaii," this Office concludes that these entities are one and the same.

10. For the same reason, the Commission on this date also rejected the pre-probable cause conciliation requests by Japan Travel Bureau International, Masao Hayashi, and Minami Group (USA). See infra.

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Subsequently in MUR 2892, the Commission found no reason to believe that GEM PAC violated 2 U.S.C. § 441e. Accordingly, this Office recommends that the Commission find no reason to believe that GEM PAC violated 2 U.S.C. § 441e regarding its contributions in MUR 3004.

Haseko (Hawaii), Inc. (formerly Hasegawa Komuten (Hawaii), Inc.) stated in its RTB response that it is majority foreign-owned and has made contributions through a U.S. citizen since "spring or early summer of 1988" (Att. 256). Before that, the process was unclear. The funds used for contributions were domestic. A number of the contributions listed in Haseko's RTB response[11] occurred before 1988. Thus, this Office will inquire into Haseko's contribution process before mid-1988. One of Haseko's MUR 3004 contributions took place in 1987; the other four in 1988, in April, May, September, and October. The Office of the General Counsel recommends that the Commission find reason to believe that Haseko (Hawaii), Inc. violated 2 U.S.C. § 441e regarding its MUR 3004 contributions. This Office will send questions to Haseko regarding its contribution process and then report to the Commission.

Hawaii Omori Corporation stated in its MUR 2892 RTB response that it is a domestic corporation jointly owned by two Japanese corporations (Att. 284). The response lists four individuals as participating in the contribution decision-making, but their nationality is not specified. Hawaii Omori submitted a request

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11. The contributions listed in Haseko's RTB response include the contributions alleged in MUR 3004.

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for pre-probable cause conciliation on June 18, 1990 that the Commission rejected on June 27, 1990. The Office of the General Counsel recommends that the Commission find reason to believe that Hawaii Omori Corporation violated 2 U.S.C. § 441e regarding its MUR 3004 contributions. This Office will send questions to determine the nationality of the contribution decision-makers and then report to the Commission.

The MUR 3004 complaint noted a $250 contribution by "Masao Hayashi Japan Travel International, Inc." to state Representative Romy Cachola on February 23, 1989. Masao Hayashi, an individual, responded that he has no knowledge of an entity of the above name and that he made no contribution to Rep. Cachola (Att. 67). Masao Hayashi was General Manager of Japan Travel Bureau International at the time of the contributions in question (see his response in MUR 2892), and the response includes a copy of a $250 check from Japan Travel Bureau International, Inc. to Friends of Romy Cachola dated February 23, 1989. Thus, Hayashi does not appear to have made the contribution in question. In addition, there appears to be no such entity as Masao Hayashi Japan Travel International. Rather, it appears that the alleged contribution was made by Japan Travel Bureau International. Therefore, this Office recommends that the Commission find no reason to believe that Masao Hayashi violated the Act in MUR 3004 regarding the February 23, 1989 contribution to the Campaign of Romy Cachola. The Commission denied Masao Hayashi's request for pre-probable cause conciliation in MUR 2892 on October 1, 1990. This Office now recommends that the Commission accept Masao Hayashi's request to enter into

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pre-probable cause conciliation regarding his contributions in MUR 2892.

Japan Travel Bureau International, Inc. indicated in its RTB response that Masao Hayashi, a foreign national, played a role in the contribution decision-making (Att. 293). Therefore, this Office recommends that the Commission find reason to believe that Japan Travel Bureau International violated 2 U.S.C. § 441e regarding its contributions in MUR 3004 including the above-noted "Masao Hayashi Japan Travel International" contribution. The company requested pre-probable cause conciliation in MUR 2892, which the Commission rejected on October 1, 1990. This Office now recommends that the Commission accept Japan Travel Bureau International, Inc.'s request to enter into pre-probable cause conciliation.

Mauna Lani Resort PAC is a Hawaii state committee connected with Mauna Lani Resort, Inc.[12] The PAC's RTB response indicates that the corporation is a Hawaii corporation owned by a foreign entity that is in turn 99.6% owned by several foreign corporations (Att. 339). The funds for the PAC are provided directly by the corporation. Two U.S. citizens made the decisions regarding the political contributions. The process for making contributions by the PAC involves a written request submitted by a department head, and reviewed by the Corporate Secretary, Chief Accountant, and

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12. Mauna Lani Resort PAC is a respondent in both MURs 2892 and 3004. Mauna Lani Resort, Inc. is a respondent in MUR 2892 but not in MUR 3004. Another contributor, Mauna Lani Bay Hotel, represented by the same counsel and apparently a related entity, is a respondent in MUR 3004 only and is covered in section III.A.4. infra.

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Treasurer, with the check cosigned by the Treasurer and President. Because all of these persons (except for the Chief Accountant and the Vice president of Corporate Communications, presumably the requesting department head) involved in the contribution in question are foreign nationals and because there is an outstanding question of fact regarding the source of funds, the two pronged test is not satisfied. Because of these questions, this Office recommends that the Commission find reason to believe that Mauna Lani Resort PAC violated 2 U.S.C. § 441e regarding its contributions in MUR 3004. This Office will send questions to determine further detail of the contribution process and the source of the corporation's funds and then report to the Commission.

The RTB response of Minami Group (USA), Inc. includes an affidavit by a foreign national, Minami's Executive Vice-President, stating that he made the contribution decisions (Att. 357). Therefore, this Office recommends that the Commission find reason to believe that Minami Group (USA), Inc. violated 2 U.S.C. § 441e regarding its MUR 3004 contribution. Minami requested pre-probable cause conciliation in MUR 2892, which the Commission rejected on October 1, 1990. This Office now recommends that the Commission accept Minami's request to enter into pre-probable cause conciliation.

Mokuleia Land Company and Sankyo Tsusho Co., Ltd. doing business as Mokuleia, have not responded to the Commission's interrogatories sent to Mokuleia pursuant to the RTB finding in MUR 2892. The Commission rejected Mokuleia's MUR 2892 request for

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pre-probable cause conciliation on October 1, 1990 pending its responses to the Commission's interrogatories. The Mokuleia/Sankyo response to the complaint in MUR 3004 challenges the Commission's jurisdiction but provides no substantive information regarding their ownership, the nationality of the contribution decision-makers or the source of the funds used for the contributions (Att. 77).[13] In light of the unrefuted allegations in the complaint that these entities are foreign nationals, this Office recommends that the Commission find reason to believe that Mokuleia Land Company and Sankyo Tsusho Co., Ltd. violated 2 U.S.C. § 441e regarding their MUR 3004 contributions.

One corporation, Taiyo Hawaii Company, Ltd., admits in its RTB response as well as in its MUR 3004 response that it is a foreign national (Att. 114). It contests the applicability of section 441e to the activity in question.[14] In light of its admission, this Office recommends that the Commission find reason to believe Taiyo Hawaii violated 2 U.S.C. § 441e regarding its MUR 3004 contribution. Taiyo submitted a request for pre-probable cause conciliation on June 18, 1990 that the Commission rejected on June 27, 1990. This Office now recommends that the Commission enter into conciliation with Taiyo Hawaii prior to a finding of probable cause to believe regarding its contributions in MUR 2892 and MUR 3004.

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13. See the attached Factual and Legal Analysis for this Office's analysis of the jurisdiction issue.

14. See the attached Factual and Legal Analysis for this Office's analysis of the jurisdiction issue.

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2. CONTRIBUTOR PROVING DOMESTIC OWNERSHIP

One corporation, Central Development Corporation, presented information to this Office to support a recommendation to the Commission that there is no reason to believe a violation of section 441e occurred because the entity is domestically owned. One Aki Mizushima responded that he owns 50% of Central Development and that he is an American citizen (Att. 22A). Mizushima's earlier response to the complaint included a copy of his United States passport issued in December 1987, before the allegedly illegal contribution (Att. 19). The other 50% of Central Developmemt is owned by a permanent resident alien (Att. 22A). In light of this evidence indicating that the corporation is domestically owned, this Office recommends that the Commission find no reason to believe that Central Development Corporation violated section 441e.

3. CORPORATE CONTRIBUTORS SATISFYING THE TWO-PRONGED TEST

As discussed above, in order to meet the requirements of this test, an entity associated with a foreign national (either as a domestic subsidiary or as a state political action committee) must demonstrate that it does not receive funds for the contributions from its parent foreign national, and that the parent foreign national does not exercise any control or decision making responsibility regarding the contribution. Satisfying this latter prong requires examining the identity of the decision makers, including the officers and directors of the domestic subsidiary.

The response of Foremost Dairies-Hawaii, Ltd. states that it is a Hawaii corporation wholly-owned by a foreign corporation

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(Att. 29). Foremost Dairies' principal place of business is Hawaii and its revenues from which its contributions were made are exclusively derived from Hawaii sales. A U.S. citizen, the vice-president of sales and marketing, makes the decisions with input from counsel regarding the recipients and amounts of contributions without control, direction, or modification by foreign nationals.

KG (Hawaii) Corporation is a Hawaii corporation owned by a domestic corporation that is in turn owned by a foreign corporation (Att. 59). The KG president, a permanent resident alien, is solely responsible for decision-making regarding political contributions. The response also states that contributions are made with revenue generated through Hawaii and other activities in the U.S.

Pacific Resources PAC is a federally-registered committee connected to Pacific Resources, Inc., another respondent in this matter (see infra). All of the corporation's officers and all of its directors except one are U.S. citizens or permanent resident aliens (Att. 111). The PAC's steering committee is made up exclusively of U.S. citizens and all funds in the PAC are from U.S. citizens (Att. 110). The PAC's contributions noted in the complaint were apparently made from its federal account.[15]

TSA International, Limited, a Hawaii corporation, is a subsidiary of a Hawaii holding company which in turn is

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15. This Office has reviewed the PAC's disclosure reports, which contain some itemized nonfederal contributions, although not the contributions noted in the complaint.

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wholly-owned by a Delaware corporation (Att. 117). The stock of the Delaware corporation is owned by foreign nationals. The funds used for political contributions are derived from domestic business activities. All contribution decision-making authority is vested in the TSA officer/director who is a permanent resident alien. The other two directors, one of whom is TSA's other officer, are foreign nationals who have neither provided any of the contribution funds nor have exercised any decision-making authority over the company's contribution activities.

This Office recommends that the Commission find no reason to believe these respondents violated section 441e.

4. CORPORATE CONTRIBUTORS FAILING THE TWO-PRONGED TEST[16]

Daiei (USA), Inc. provided a response which challenges the Commission's jurisdiction and states that the contribution is in the process of being returned (Att. 26). The response includes no information regarding the source of the contribution funds or the nationality of the individuals who made the decisions regarding the contributions. The RTB response of Daiei Hawaii Investments, Inc. indicates that Daiei (USA), Inc. is a Hawaii corporation wholly-owned by a foreign corporation (Att. 26).

Two entities, Horita Corporation and Kazuo Totoki, Ltd., have not responded to the complaint. According to the Friends of Henry Peters response, these entities are listed in Hawaii state records as owned by U.S. citizens (Att. 203). Horita and Kazuo Totoki have themselves not rebutted the complaint's assertion of their

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16. One MUR 3004 corporate entity, Ala Moana, is considered supra at page 6 under its parent, Azabu U.S.A. Corporation.

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foreign national status, however, and this Office recommends a reason to believe finding in order to question these entities directly.

The Ilikai is a resort hotel that is owned by a domestic corporation that in turn is owned by a foreign corporation (Att. 48). Funds for Ilikai operations are generated in Hawaii by the hotel. The foreign parent exercised no control over the contribution and in fact had no knowledge of it. The response, however, does not provide information regarding the nationality of the individuals who made the contribution decisions.

Respondent Mauna Lani Bay Hotel incorporated as its response a response filed in MUR 2846 by related entities Mauna Lani Resort, Inc. and Mauna Lani Resort PAC, although Mauna Lani Bay Hotel itself was not a respondent in that matter (Att. 73).[17] This incorporated response makes many of the arguments addressed in the Analysis section of the MUR 2892 General Counsel's Report dated April 19, 1990, but nowhere provides any information regarding Mauna Lani Bay Hotel's contributions.

Obun Hawaii, Inc. is a wholly-owned subsidiary of a foreign corporation. The response states that all business decisions excluding the purchase of real estate and major equipment are made in Hawaii by U.S. citizens and resident aliens, and that a U.S. citizen made the decision regarding the contribution at issue (Att. 83). The response does not provide information regarding the source of the contribution funds.

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17. On May 1, 1990, the Commission merged MUR 2846 with MUR 2892.

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Pacific Resources, Inc.'s response states that it is a Hawaii corporation that on May 11, 1989 became a subsidiary of a U.S. corporation whose ultimate parent is an Australian corporation (Att. 108). Prior to this date, Pacific Resources apparently was wholly-owned by a Japanese corporation.[18] Before and after May 1989 all officers and directors except one are U.S. citizens or permanent resident aliens. The response states that Pacific Resources' contribution decisions would not be influenced or directed by any foreign national. The response does not, however, specify who made the contribution decisions or whether the funds used for contributions arose from domestic operations. Finally, the response asserts that one of the alleged contributions, dated November 11, 1989, never took place. This Office agrees, in light of the fact that the complaint is dated November 3, 1989.

West Beach Estates provided a response which challenges the Commission's jurisdiction and states that the contribution is in the process of being returned (Att. 125).[19] The response includes no information regarding the source of the contribution funds or the nationality of the individuals who made the decisions regarding the contributions.

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18. The response provides no information on this point, but a November 14, 1989 Congressional Research Service report, PACs Sponsored by Corporations Partly or Wholly Owned by Foreign Investors, notes that Pacific Resources was 100% owned during the 1986 and 1988 election cycles by Mitsui & Co., Ltd. of Japan. Pacific Resources has a federally-registered connected political action committee that is a also respondent in this matter. See supra section III.A.3.

19. The response notes "the contribution," although the complaint lists 18 West Beach Estates contributions.

The Westin Kauai states in its response that it is wholly-owned by a limited partnership organized under Hawaii law (Att. 128). The two general partners are both wholly-owned (indirectly) by U.S. citizens. A limited partner that owns 16% of the partnership is indirectly owned by Japanese citizens but exercises no control over management or operations of the partnership. The response, however, neither states the nationality of the individuals who made the contribution decisions nor the source of the contribution funds (beyond the bank account name and number). Additionally, the nature of the relationship between the general partners and the limited partners is unclear. See the MUR 2892 May 1, 1990 GC Report's similar treatment of respondent American Hawaii Cruises.

Consequently, this Office recommends that the Commission find reason to believe all respondents noted above violated section 441e.

B. CANDIDATE COMMITTEES

The MUR 3004 complaint alleges that twenty-three Hawaii state candidate committees violated section 441e by accepting contributions from foreign nationals. The combined total of alleged prohibited contributions from the complaint in MUR 3004 is $36,425.[20] The amounts of the contributions ranged from as little as $100 to a few contributions of $2000. The listings below of the alleged receipt of contributions includes both those noted in the MUR 3004 complaint and in the respondent contributor responses

20. Several of the alleged contributions are not identified by amount.

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in MUR 2892. The listings omit contributions from GEM PAC, as to which the Commission found no reason to believe in MUR 2892. In addition, the listings include contributions from entities considered elsewhere in this report against whom this Office recommends no reason to believe findings; these contributions are marked in bold type and are not included in the contribution totals.[21]

1. Complaint-Generated Respondents: State Representative Committees

Twelve of the fourteen respondent state representative committees have the same counsel and provided very similar responses. These responses make the same arguments as the corporate contributor respondents and also assert that the complaint is moot and the Commission should take no action where the contributions have been returned.

The other two respondent state committees note in their responses that the State Campaign Spending

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21. This report recommends that the Commission find no reason to believe that the following contributors violated the Act regarding their MUR 3004 contributions:

Respondent	Page in Report
Central Development Corp.	13
Foremost Dairies-Hawaii	13
KG (Hawaii) Corp.	14
Ohbayashi Hawaii Corp.	4
Otaka, Inc.	5
Pacific Resources PAC	14
TSA International, Ltd.	14

Commission did not consider 2 U.S.C. § 441e to apply to state elections at the time of the contributions in question.

The Campaign of Peter Apo is alleged to have received a $375 contribution from West Beach Estates on April 27, 1987. In its response of January 16, 1990, the Campaign states that the treasurer had been instructed to return the contribution (Att. 132).

The Campaign of Romy Cachola is alleged to have received the following contributions:

Contributor	Date	Amount
Azabu USA Corp.	2-??-89	$100
Central Development Corp.	2-22-89	$500
The Ilikai	4-05-89	$125
Japan Air Lines	3-01-88	$100
Japan Travel Bureau Int'l, Inc.	2-19-88	$250
	2-22-89	$250
	2-23-89	$250
	6-22-89	$225
Mauna Lani Resort PAC	2-19-88	$125
	3-02-89	$125
Nitto Hawaii	3-31-88	$100
Otaka	3-04-88	$ 43.68
West Beach Estates	4-05-88	$250
	4-06-89	$500
	TOTAL	$2300

In its response of January 16, 1990, the Campaign stated that the treasurer had been instructed to return the MUR 3004 contributions (Att. 138).

The Campaign of Clarice Hashimoto is alleged to have received the following contributions:

Contributor	Date	Amount
Japan Travel International, Inc.	3-03-88	$ 250
	3-14-89	$ 250
Pacific Resources PAC	5-22-89	$ 400
	TOTAL	$ 500

In her response for the Campaign on December 1, 1989,

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Representative Hashimoto stated that she has returned the MUR 3004 contributions (Att. 208).[22]

The Campaign of Ken Hiraki is alleged to have received a $500 contribution from West Beach Estates on September 4, 1988. In its responses of December 6, 1989 and January 16, 1990, the Campaign stated that it has returned the contribution (Att. 146, 147).

Friends of Karen Horita is alleged to have received a $2,000 contribution from West Beach Estates on September 3, 1988. In its response of December 28, 1989, the Committee provided a copy of its letter to West Beach Estates regarding the Committee's return of the contribution (Att. 153). A copy of the check was included.

Friends for Marshall Ige is alleged to have received the following contributions:

Contributor	Date	Amount
Haseko	4-02-90	$250
Minami Group (USA), Inc.	9-14-88	$150
West Beach Estates	3-28-88	$125
	3-27-89	$250
	TOTAL	$775

In its response of January 16, 1990, the Committee stated that the treasurer had been instructed to return the MUR 3004 contributions (Att. 160).

The Campaign of Ezra Kanoho is alleged to have received the

22. The RTB response by Japan Travel Bureau International provided a list of its contributions that includes the 1988 Hashimoto contribution but not the alleged 1989 contribution (Att. 302). The response also notes that it received a refund of the Hashimoto contribution on December 1, 1989.

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following contributions:

Contributor	Date	Amount
Hasegawa Komuten (Haseko)	4-08-87	$500
	5-18-88	$500
	9-21-88	$500
	10-24-88	$300
The Westin Kauai	5-18-88	$250
	TOTAL	$2050

In its response of January 16, 1990, the Campaign made no mention of the return of these contributions (Att. 166).

The Campaign of Bertha Kawakami allegedly received $250 contributions from Japan Travel Bureau International, Inc. on March 1, 1988, and March 27, 1989. In its response of January 16, 1990, the Campaign stated that the treasurer had been instructed to return the contribution noted in the MUR 3004 complaint (Att. 172). Both contributions were refunded by February 6, 1990, according to the RTB response of Japan Travel Bureau International (Att. 293).

Friends of Danny Kihano allegedly received the following contributions:

Contributor	Date	Amount
Otaka	1-31-89	$ 500
Pacific Resources, Inc.	3-23-77	$ 250
West Beach Estates	--	$ 650
	TOTAL	$ 900

In its response of January 16, 1990, the Campaign notes that according to records maintained at the Hawaii Department of Commerce and Consumer Affairs, Pacific Resources was a publicly held domestic corporation at the time the contribution was made (no later than 3-23-89), and thus its contribution was legal (Att.

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178). Pacific Resources, Inc.'s response states that it is a Hawaii corporation that on May 11, 1989 became a subsidiary of a U.S. corporation whose ultimate parent is an Australian corporation (Att. 109). Prior to this date, Pacific Resources apparently was wholly-owned by a Japanese corporation.[23] Finally, the Campaign states that the treasurer had been instructed to return the West Beach Estates contribution (Att. 179).

Friends of Joe Leong allegedly received the following contributions:

Contributor	Date	Amount
Mokuleia Land Company	5-03-89	$ 250
Ohbayashi Hawaii Corporation	6-07-88	$ 500
Sankyo Tsusho Co., Ltd. dba Mokuleia Land Company	5-11-88	$2000
	TOTAL	$2250

In its response of January 16, 1990, the Committee states that it returned the Ohbayashi contribution and the 1988 Sankyo Tsusho contribution in February, 1989, before the complaint in MUR 3004 was filed (Att. 184).[24] The Committee also states that the treasurer was instructed to return the 1989 Mokuleia Land Company contribution.

Friends of Tom Okamura allegedly received the following contributions:

23. The response provides no information on this point, but a November 14, 1989 Congressional Research Service report, PACs Sponsored by Corporations Partly or Wholly Owned by Foreign Investors, notes that Pacific Resources was 100% owned during the 1986 and 1988 election cycles by Mitsui & Co., Ltd. of Japan.

24. A copy of the Committee's refund to check to Ohbayashi was included with the latter's response (Att. 101).

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Contributor	Date	Amount
Foremost Dairies-Hawaii	5-17-??	$200
Haseko	4-02-90	$ 50
Mauna Lani Resort PAC	6-08-87	$250
Obun Hawaii, Inc.	5-26-??	$300
Otaka	5-28-87	$ 50
	5-10-88	$100
Pacific Resources PAC	5-27-??	$500
West Beach Estates	7-15-??	$500
	TOTAL	$1100

In its response of January 16, 1990, the Committee states that the treasurer had been instructed to return all the MUR 3004 contributions (Att. 190).

Friends of Paul Oshiro allegedly received the following contributions:

Contributor	Date	Amount
All Nippon Airways	2-17-88	$ 50
Haseko	2-26-90	$250
Japan Air Lines	3-01-88	$100
West Beach Estates	4-10-88	$500
	4-18-89	$250
	TOTAL	$1150

In its response of January 16, 1990, the Committee states that the treasurer had been instructed to return the contributions (Att. 196).

Friends of Henry Peters allegedly received the following contributions:

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Contributor	Date	Amount
ANA Hotels[25]	7-18-86	$ 100
Daiei (USA), Inc.	4-29-88	$ 250
Haseko	1-05-90	$ 500
Horita Corp.	4-15-88	$ 250
Kazuo Totoki, Ltd.	5-20-88	$ 250
KG (Hawaii) Corp.	4-22-??	$ 500
Otaka	4-19-88	$ 250
	1-19-90	$1000
TSA International, Ltd.	4-22-??	$ 500
West Beach Estates	8-08-88	$1500
	TOTAL	$2750

In its response of January 16, 1990, the Committee notes that according to records maintained at the Hawaii Department of Commerce and Consumer Affairs, Horita Corp. and Kazuo Totoki are Hawaii corporations whose outstanding stock is wholly owned by United States citizens (Att. 202). Thus, the Committee asserts, these two contributions are also legal.[26] In addition, the Committee states that the treasurer had been instructed to return the remaining contributions.

Friends for Say allegedly received the following contributions:

Contributor	Date	Amount
Foremost Dairies-Hawaii	5-13-88	$100
Japan Travel Bureau Int'l	8-25-87	$150
West Beach Estates	8-27-88	$975
	TOTAL	$1125

25. This entity is a respondent in MUR 2892 but not in MUR 3004. The Commission found reason to believe that it violated 2 U.S.C. § 441e on May 1, 1990. This Office has reviewed ANA Hotel's RTB response, and will forward a brief recommending that the Commission find no probable cause to believe that it violated the Act.

26. See supra at page 16 for this Office's reason to believe recommendation regarding these two respondent entities based on their failure to respond and their resultant failure of the two-prong test.

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In his response for the Committee on December 4, 1989, Representative Say stated that he was returning the MUR 3004 contributions (Att. 209). His response included copies of refund checks to Foremost Dairies and West Beach Estates.

This Office recommends that the Commission find reason to believe that the above-listed committees violated 2 U.S.C. § 441e by accepting contributions from foreign nationals.

2. Complaint-Generated Respondents: State Senator Committees

Of the nine respondent state senators, eight submitted a joint response dated January 3, 1990 (Att. 211). The response states that the senators were unaware that federal election laws applied to state elections and that they received no hint from state officials regarding compliance with federal election law. The response also notes that the senators had received no word from the federal government prior to the time of the contributions regarding the application of federal law. The senators also make jurisdictional arguments similar to those of other respondents that are rebutted in the Analysis section of the MUR 2892 General Counsel's Report dated April 19, 1990. The senators also state that the ownership of companies doing business in Hawaii is often not known; many individuals and companies have Japanese names. In addition, they state that the Commission determined that GEM PAC's contributions were legal; thus, other contributions noted in the complaint may be legal. Finally, the response notes that the senators have no access in Hawaii to the Commission's advisory opinions, which are the source of Commission policy on the foreign

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national contribution issue. The senators have apparently returned none of the contributions yet, but have proposed returning all the noted contributions in exchange for the Commission terminating this matter (Att. 214).

This Office has obtained a document indicating that at least some of these respondent senators may not in fact have been unaware of federal election law as they claim. A Hawaiian Senate Ways and Means Committee Report regarding a 1989 election law bill that would have amended Hawaii state law to prohibit contributions from foreign nationals states that "While the contributions prohibited under this section [of the bill] are the same as those which the federal government contends are illegal in state or local elections under its laws and regulations, this bill is not intended to demonstrate any acquiescence to that contention" (Att. 402). Five of the respondent senators signed this report, which is addressed to the President of the Senate, another of the eight respondent senators who filed the joint response.

The ninth respondent senator, Anthony Chang, in responding for his campaign committee, submitted a response dated January 3, 1990 very similar to the other senators' joint response except that it omitted the statement regarding a willingness to return the contributions (Att. 220). Shortly thereafter, the Friends for Tony Chang Committee provided an additional submission stating that Senator Chang had agreed to return the contribution (Att.

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225). All nine respondent senators' allegedly illegal contributions alleged in the MUR 3004 complaint and in the MUR 2892 RTB responses are listed in the following chart:

Recipient Senator	Contributor	Amount	Date
Tony Chang	Daiei Hawaii Investments	$ 250	12-??-88
	Japan Travel Bureau Int'l	300	3-28-87
		25	3-30-89
	TOTAL	$ 575	
Mike Crozier	Daiei Hawaii Investments	$ 200	5-01-89
	Pacific Resources	200	5-01-89
	error (post-complaint)	300	11-08-89
	West Beach Estates	250	8-30-88
	TOTAL	$ 650	
Gerald Hagino	Ala Moana Hotel	$1000	??
	Azabu Realty Inc.	250	2-??-88
		250	2-29-89
	Azabu U.S.A. Corp.	500	1986/87
	Mokuleia Land Company	250	3-09-89
		500	3-17-89
	TOTAL	$ 750	
Milton Holt	Azabu U.S.A. Corp.	$ 300	4-19-88
		25	4-??-88
		100	3-??-89
	Daiei Hawaii Investments	300	4-14-88
	Hasegawa Komuten (Haseko)	300	4-14-88
	Japan Travel Bureau Int'l	300	3-21-88
		1000	3-20-89
	Matsuzato	150	4-14-88
	Mauna Lani Resort PAC	60	4-29-88
	Nitto Hawaii	150	4-10-87
	Otaka, Inc.	118.50	6-12-87
		300	4-19-88
		50	3-02-89
	West Beach Estates	300	4-25-89
		250	5-15-89
	The Westin Kauai	300	6-15-88
	TOTAL	$3110	
Richard Matsuura	Azabu Realty Inc.	$ 500	2-19-88
	Japan Air Lines	90	2-21-86
		25	2-19-87
		50	2-29-88
	Japan Travel Bureau Int'l	250	2-08-88
		250	2-13-89
	Mauna Lani Resort Inc. PAC	50	2-11-88
		500	7-01-88
		50	2-15-89

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	Taiyo Hawaii Co. Ltd.	90	2-18-86
		125	2-27-87
		150	2-08-88
	TOTAL	$1630	
Norman Mizuguchi	Japan Travel Bureau Int'l	90	6-23-87
		500	2-06-89
		150	4-06-89
		150	5-23-89
	Matsuzato	90	2-18-87
		100	2-01-89
	Otaka	120	1-??-86
		120	1-22-87
		100	1-31-89
	West Beach Estates	$ 500	2-24-88
	TOTAL	$1580	
Malama Solomon	Hawaii Omori	$ 50	2-12-87
	Mauna Lani Bay Hotel	250	3-01-88
	Mauna Lani Resort PAC	250	5-05-87
	Otaka	50	2-??-86
		50	2-09-89
	Taiyo Hawaii Co. Ltd.	100	2-18-86
		75	2-27-87
		100	1-29-88
		250	1-18-90
	TOTAL	$1075	
Richard Wong	All Nippon Airways	$ 500	4-30-87
	Azabu USA Corp.	1000	1986/87
	Otaka, Inc.	1000	6-07-88
	Pacific Resources PAC	500	5-05-??
	West Beach Estates	2000	5-23-88
	TOTAL	$2500	
Mamoru Yamasaki	All Nippon Airways	$ 250	5-07-87
	Hawaii Omori	500	6-09-88
	Japan Travel Bureau	350	4-22-87
	TOTAL	$1100	

Senator Hagino asserted in an attachment to the joint response that his campaign's receipt of the Ala Moana Hotel contribution was legal because the hotel was owned by a domestic corporation at the time of the contribution (Att. 217). Senator Solomon stated in an attachment that his campaign committee was returning the sole contribution noted in the complaint (Att. 216). The senators' joint response notes that Taiyo Hawaii Company, Ltd. is

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not incorporated in the United States and its contribution to the Campaign of Richard Matsuura was being returned (Att. 213).

This Office recommends that the Commission find reason to believe that the above-listed committees violated 2 U.S.C. § 441e by accepting contributions from foreign nationals.

3. Internally-Generated Respondents

This Office has reviewed the MUR 2892 responses and has identified numerous other state and local committees that appear to have received contributions from respondent contributors. Many of these contributions were for small amounts, however, and the status of many of the contributors remains uncertain. However, this Office has identified MUR 2892 respondents who appear to have made contributions in violation of 2 U.S.C. § 441e.[27]

The following list contains the recipient committees and their contributions.

Recipient Committee	Contributor	Amount	Date
Dante Carpenter	All Nippon Airways	$ 200	2-02-88
	Japan Air Lines	125	2-04-86
		125	2-19-87
		200	1-28-88
	Taiyo Hawaii Co. Ltd.	50	12-04-86

27. For example, on October 1, 1990, the Commission entered into PPCC with three respondents, who together made a total of 13 contributions amounting to $2,725 from October 1986 to the present.

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		100	11-13-87
		50	8-25-88
		2000	10-11-88
	total	$2850	
Takashi Domingo	Taiyo Hawaii Co. Ltd.	$ 100	10-06-87
		500	8-25-88
	total	$ 600	
Lorraine Jitchaku Inouye	Taiyo Hawaii Co. Ltd.	$2000	6-22-88
		500	10-05-88
	total	$2500	
Tony Kunimura	Japan Air Lines	$ 100	5-27-87
		100	6-20-88
	Japan Travel Bureau	200	6-23-87
	total	$ 400	
Dennis Nakasoto	Japan Travel Bureau	$ 225	2-26-87
		250	2-03-88
		250	1-30-89
	total	$ 725	
Harry Ruddle	Taiyo Hawaii Co. Ltd.	$ 500	9-08-88
		550	10-13-88
	total	$1050	
Stephen Yamashiro	Taiyo Hawaii Co. Ltd.	$ 500	3-14-88

This Office therefore recommends the Commission find reason to believe the above-noted committees violated section 441e.

IV. RECOMMENDATIONS

1. Merge MUR 3004 with MUR 2892.

2. Find no reason to believe Ohbayashi Hawaii Corporation and Otaka, Inc. violated 2 U.S.C. § 441e.

3. Find reason to believe Azabu Realty, Inc., Azabu U.S.A. Corporation, Ala Moana Hotel, Daiei Hawaii Investments, Inc., Haseko (Hawaii), Inc., Hawaii Omori Corporation, Japan Travel Bureau International, Inc., Mauna Lani Resort PAC, Minami Group (USA), Inc., Mokuleia Land Company, Sankyo Tsusho Co., Ltd., and Taiyo Hawaii Company, Ltd. violated 2 U.S.C. § 441e.

4. Find no reason to believe GEM of Hawaii Political Action Committee violated 2 U.S.C. § 441e and close the file regarding this respondent.

5. Find no reason to believe that Masao Hayashi violated 2 U.S.C. § 441e.

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6. Enter into pre-probable cause conciliation with Daiei Hawaii Investments, Inc., Masao Hayashi, Japan Travel Bureau International, Inc., Minami Group (USA), Inc., and Taiyo Hawaii Company, Ltd.

7. Find no reason to believe Central Development Corporation violated 2 U.S.C. § 441e and close the file regarding this respondent.

8. Find no reason to believe Foremost Dairies-Hawaii, Ltd., KG (Hawaii) Corporation, Pacific Resources PAC, and TSA International, Limited violated 2 U.S.C. § 441e and close the file regarding these respondents.

9. Find reason to believe Daiei (USA), Inc., Horita Corporation, Kazuo Totoki, Ltd., The Ilikai, Mauna Lani Bay Hotel, Obun Hawaii, Pacific Resources, Inc., West Beach Estates, and The Westin Kauai violated 2 U.S.C. § 441e.

10. Find reason to believe the Campaign of Peter Apo, the Campaign of Romy Cachola, the Campaign of Clarice Hashimoto, the Campaign of Ken Hiraki, Friends of Karen Horita, Friends for Marshall Ige, the Campaign of Ezra Kanoho, the Campaign of Bertha Kawakami, Friends of Danny Kihano, Friends of Joe Leong, Friends of Tom Okamura, Friends of Paul Oshiro, Friends of Henry Peters, and Friends for Say violated 2 U.S.C. § 441e.

11. Find reason to believe the campaigns of Tony Chang, Mike Crozier, Gerald Hagino, Milton Holt, Richard Matsuura, Norman Mizuguchi, Malama Solomon, Richard Wong, and Mamoru Yamasaki violated 2 U.S.C. § 441e.

12. Find reason to believe the campaigns of Dante Carpenter, Takashi Domingo, Lorraine Jitchaku Inouye, Tony Kunimura, Dennis Nakasoto, Harry Ruddle, and Stephen Yamashiro violated 2 U.S.C. § 441e.

13. Approve the attached sample Factual and Legal Analyses and the appropriate letters.[29]

12/21/90
Date

Lawrence M. Noble
General Counsel

---

29. For each respondent regarding whom the Commission finds reason to believe, the factual and legal analysis will consist of the MUR 2892 legal analysis and the redacted paragraph(s) discussing respondent in this First General Counsel's Report. A sample copy of the legal analysis is attached, as well as a sample factual analysis of one contributor and eight recipient state senators who provided a joint response.

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Attachments
A-1. Contribution list by contributor (pages A1-A4)
1. Responses to complaint in MUR 3004 (pages 1-226)
2. Responses to interrogatories in MUR 2892 (pages 227-401)
3. Hawaii Senate Committee Report (pages 402-405)
4. Sample Factual and Legal Analyses (pages 406-420)
5. Proposed Conciliation Agreements (5) (pages 421-438)

Staff Assigned: Mark Allen

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/ DONNA ROACH
COMMISSION SECRETARY

DATE: DECEMBER 28, 1990

SUBJECT: MUR 3004 & 2892 - FIRST GENERAL COUNSEL'S RPT. DATED DECEMBER 21, 1990.

The above-captioned document was circulated to the Commission on Wed., Dec. 26, 1990 at 4:00 p.m.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens _____

Commissioner Elliott _____

Commissioner Josefiak XXXXX

Commissioner McDonald _____

Commissioner McGarry _____

Commissioner Thomas _____

This matter will be placed on the meeting agenda for TUESDAY, JANUARY 8, 1991.

Please notify us who will represent your Division before the Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MURS 3004
Ala Moana Hotel (and 26 other Hawaii businesses);	)	AND 2892
Campaign of Rep. Peter K. Apo (and 22 other state candidates);	)	
GEM of Hawaii PAC;	)	
Pacific Resources PAC;	)	
Mauna Lani Resort Inc. PAC.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on January 8, 1991, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions with respect to MURS 3004 and 2892:

1. Merge MUR 3004 with MUR 2892.

2. Find no reason to believe Ohbayashi Hawaii Corporation and Otaka, Inc. violated 2 U.S.C. § 441e.

3. Find reason to believe Azabu Realty, Inc., Azabu U.S.A. Corporation, Ala Moana Hotel, Daiei Hawaii Investments, Inc., Haseko (Hawaii), Inc., Hawaii Omori Corporation, Japan Travel Bureau International, Inc., Mauna Lani Resort PAC, Minami Group (USA), Inc., Mokuleia Land Company, Sankyo Tsusho Co., Ltd., and Taiyo Hawaii Company, Ltd. violated 2 U.S.C. § 441e.

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4. Find no reason to believe GEM of Hawaii Political Action Committee violated 2 U.S.C. § 441e and close the file regarding this respondent.

5. Find no reason to believe that Masao Hayashi violated 2 U.S.C. § 441e.

6. Enter into pre-probable cause conciliation with Daiei Hawaii Investments, Inc., Masao Hayashi, Japan Travel Bureau International, Inc., Minami Group (USA), Inc., and Taiyo Hawaii Company, Ltd.

7. Find no reason to believe Central Development Corporation violated 2 U.S.C. § 441e and close the file regarding this respondent.

8. Find no reason to believe Foremost Dairies-Hawaii, Ltd., KG (Hawaii) Corporation, Pacific Resources PAC, and TSA International, Limited violated 2 U.S.C. § 441e and close the file regarding these respondents.

9. Find reason to believe Daiei (USA), Inc., Horita Corporation, Kazuo Totoki, Ltd., The Ilikai, Mauna Lani Bay Hotel, Obun Hawaii, Pacific Resources, Inc., West Beach Estates, and The Westin Kauai violated 2 U.S.C. §441e.

(continued)

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10. Find reason to believe the Campaign of Peter Apo, the Campaign of Romy Cachola, the Campaign of Clarice Hashimoto, the Campaign of Ken Hiraki, Friends of Karen Horita, Friends of Marshall Ige, the Campaign of Ezra Kanoho, the Campaign of Bertha Kawakami, Friends of Danny Kihano, Friends of Joe Leong, Friends of Tom Okamura, Friends of Paul Oshiro, Friends of Henry Peters, and Friends for Say violated 2 U.S.C. § 441e.

11. Find reason to believe the campaigns of Tony Chang, Mike Crozier, Gerald Hagino, Milton Holt, Richard Matsuura, Norman Mizuguchi, Malama Solomon, Richard Wong, and Mamoru Yamasaki violated 2 U.S.C. § 441e.

12. Find reason to believe the campaigns of Dante Carpenter, Takashi Domingo, Lorraine Jitchaku Inouye, Tony Kunimura, Dennis Nakasota, Harry Ruddle, and Stephen Yamashiro violated 2 U.S.C. § 441e.

13. Approve the sample Factual and Legal Analyses and appropriate letters as recommended in the General Counsel's report dated December 21, 1990.

Commissioners Aikens, Elliott, Josefiak, McDonald, and McGarry voted affirmatively for the decision; Commissioner Thomas dissented.

Attest:

Jan. 10, 1991
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 11, 1991

Edean S. Ring, Esq.
1199 Dillingham Boulevard
Honolulu, HI 96817

RE: MUR 3004
GEM of Hawaii Political
Action Committee

Dear Mr. Ring:

On November 20, 1989, the Federal Election Commission notified GEM of Hawaii Political Action Committee of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On January 8, 1991, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe GEM of Hawaii Political Action Committee violated 2 U.S.C. § 441e. Accordingly, the Commission closed its file in this matter as it pertains to your client.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

9404357353

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 11, 1991

Mr. Michael K. Tanigawa
Tanigawa & Tanigawa
Suite 1550 Pacific Tower
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 3004 & 2892
Masao Hayashi

Dear Mr. Tanigawa:

On November 20, 1989, the Federal Election Commission notified your client, Masao Hayashi, of the complaint in MUR 3004 alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended, with regard to the contribution alleged in MUR 3004.

On January 8, 1991, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Masao Hayashi violated 2 U.S.C. § 441e in MUR 3004.

Previously, on May 1, 1990, the Federal Election Commission found reason to believe in MUR 2892 that Masao Hayashi violated 2 U.S.C. § 441e. At your request, on January 8, 1991, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of MUR 2892 prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If your client agrees with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact

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Todd Hageman, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 11, 1991

Mr. Kevin S.C. Chang
Kobayashi, Watanabe, Sugita,
Kawashima & Goda
Hawaii Tower, 8th Floor
745 Fort Street
Honolulu, HI 96813-3889

RE: MUR 3004
Ohbayashi Hawaii Corp.

Dear Mr. Chang:

On November 20, 1989, the Federal Election Commission notified your client of a complaint (MUR 3004) alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On January 8, 1991, the Commission found, on the basis of the information in the complaint and information provided by you, that there is no reason to believe Ohbayashi Hawaii Corporation violated 2 U.S.C. § 441e in MUR 3004. Accordingly, the Commission closed its file in this matter as it pertains to your client.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

9404357356

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

February 11, 1991

Mr. Russell S. Kato, Esq.
Goodsill, Anderson, Quinn & Stifel
1600 Bancorp Tower
130 Merchant Street
Honolulu, HI 96813

RE: MUR 3004
Otaka, Inc.

Dear Mr. Kato:

On November 20, 1989, the Federal Election Commission notified your client of a complaint (MUR 3004) alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On January 8, 1991, the Commission found, on the basis of the information in the complaint and information provided by you, that there is no reason to believe Otaka, Inc. violated 2 U.S.C. § 441e in MUR 3004. Accordingly, the Commission closed its file in this matter as it pertains to your client.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 11, 1991

Lawrence S. Okinaga, Esq.
Stanley D. Suyat, Esq.
Carlsmith, Wichman, Case,
Mukai & Ichiki
Pacific Tower, Suite 2200
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 3004
KG (Hawaii) Corporation

Dear Messrs. Okinaga and Suyat:

On November 20, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On January 8, 1991, the Commission found, on the basis of the information in the complaint and information provided by you, that there is no reason to believe KG (Hawaii) Corporation violated 2 U.S.C. § 441e. Accordingly, the Commission closed its file in this matter as it pertains to your client.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

February 11, 1991

Franklin K. Mukai, Esquire
Stanley D. Suyat, Esquire
Carlsmith, Wichman, Case,
Mukai and Ichiki
Suite 2200, Pacific Tower
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 3004
TSA International, Ltd.

Dear Messrs. Mukai and Suyat:

On November 20, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On January 8, 1991, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe TSA International, Ltd. violated 2 U.S.C. § 441e. Accordingly, the Commission closed its file in this matter as it pertains to your client.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 11, 1991

Mr. George T. Aoki
Mr. Mario A. Roberti
Pacific Resources, Inc.
P.O. Box 3379
Honolulu, HI 96842

RE: MUR 3004
Pacific Resources PAC

Dear Messrs. Aoki and Roberti:

On November 20, 1989, the Federal Election Commission notified Pacific Resources PAC of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On January 8, 1991, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Pacific Resources PAC violated 2 U.S.C. § 441e. Accordingly, the Commission closed its file in this matter as it pertains to Pacific Resources PAC.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 11, 1991

John T. Komeiji, Esq.
Hawaii Building, 8th Floor
745 Fort Street
Honolulu, HI 96813

RE: MUR 3004
Foremost Dairies-Hawaii, Ltd.

Dear Mr. Komeiji:

On November 20, 1989, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On January 8, 1991, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Foremost Dairies-Hawaii, Ltd. violated 2 U.S.C. § 441e. Accordingly, the Commission closed its file in this matter as it pertains to your client.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 11, 1991

Aki Mizushima, President
Central Development Corp.
1585 Kapiolani Blvd. #1300
Honolulu, HI 96814

RE: MUR 3004
Central Development Corp.

Dear Mr. Mizushima:

On November 20, 1989, the Federal Election Commission notified Central Development Corp. of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On January 8, 1991, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Central Development Corp. violated 2 U.S.C. § 441e. Accordingly, the Commission closed its file in this matter as it pertains to Central Development Corp.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 11, 1991

Mr. James J. Stone
Fujiyama, Duffy & Fujiyama
Suite 2700 Pauahi Tower
Bishop Square
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 3004 & 2892
Daiei Hawaii Investments, Inc.

Dear Mr. Stone:

On November 20, 1989, the Federal Election Commission notified your client, Daiei Hawaii Investments, Inc., of a complaint in MUR 3004 alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"), with regard to the contributions alleged in MUR 3004. A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on January 8, 1991, found that there is reason to believe Daiei Hawaii Investments, Inc. violated 2 U.S.C. § 441e, a provision of the Act, in MUR 3004. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. Also on that date the Commission determined to merge MUR 3004 with MUR 2892. You should now refer to this matter as MUR 2892.

Previously, on May 1, 1990, the Federal Election Commission found reason to believe in MUR 2892 that Daiei Hawaii Investments Inc. violated 2 U.S.C. § 441e regarding its contributions in MUR 2892. At your request, on January 8, 1991, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of MUR 2892 prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. This agreement includes Daiei Hawaii Investments, Inc.'s contributions in both MURs 3004 and 2892, now merged into MUR 2892, and thus represents a complete resolution of your client's liability. If your client agrees with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light

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of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Factual and Legal Analysis
Conciliation Agreement

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Daiei Hawaii Investments, Inc. MUR 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on November 13, 1989 (MUR 3004), alleging that thirty persons, as foreign nationals, impermissibly contributed to state election campaigns in violation of 2 U.S.C. § 441e. The Commission determined to merge this matter with MUR 2892.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaint is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

The prohibition that was also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) stated:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

In late 1989 the Commission amended this regulation to include a ban on expenditures and added in a new § 110.4(a)(3) that codified the Commission's Advisory Opinions interpreting 2 U.S.C. § 441e:

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> (3) A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, or political committee, with regard to such person's Federal or nonfederal election-related activities, such as decisions concerning the making of contributions or expenditures in connection with elections for any local, State, or Federal office or decisions concerning the administration of a political committee.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction

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because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates," terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

they argue the regulation at 11 C.F.R. § 110.4 is overly broad.[3] As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office," defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. § 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentations of campaign authority).

sections of the Act dealing solely with federal elections.[5] The legislative history of section 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this statutory language is similar to if not broader than" § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office," and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well as to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113 - 114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress' intent to reach beyond federal election. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"), 52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S.C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also Brock v. Peabody Coal Co., 822 F.2d 1134, 1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

(Footnote 6 continued from previous page)
interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress' concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore, respondents' argument of statutory construction must fail.

2. TENTH AMENDMENT CONCERNS

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to

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regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

This matter involves contributions by corporations that are alleged to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including corporations, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. Furthermore, in its advisory opinions, the Commission has

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addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contributions. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL ANALYSIS

Daiei Hawaii Investments, Inc. stated in its response to the Commission's reason to believe finding in MUR 2892 that it is a Hawaii corporation owned by Daiei (USA), Inc. which is in turn owned by a foreign corporation. The funds for Daiei Hawaii Investments' contributions came from domestic sources. The contribution decisions were made by the board of directors, half of whose members are foreign nationals. This activity on the part of foreign nationals indicates that the two-prong test was not satisfied. Therefore, there is reason to believe that Daiei Hawaii Investments, Inc. violated 2 U.S.C. § 441e regarding its contribution in MUR 3004.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 11, 1991

Mr. James J. Stone
Fujiyama, Duffy & Fujiyama
Suite 2700 Pauahi Tower
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 3004 & 2892
Minami Group (USA), Inc.

Dear Mr. Stone:

On November 20, 1989, the Federal Election Commission notified your client, Minami Group (USA), Inc., of a complaint in MUR 3004 alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"), with regard to the contributions alleged in MUR 3004. A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on January 8, 1991, found that there is reason to believe Minami Group (USA), Inc. violated 2 U.S.C. § 441e, a provision of the Act, in MUR 3004. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. Also on that date the Commission determined to merge MUR 3004 with MUR 2892. You should now refer to this matter as MUR 2892.

Previously, on May 1, 1990, the Federal Election Commission found reason to believe in MUR 2892 that Minami Group (USA), Inc. violated 2 U.S.C. § 441e regarding its contributions in MUR 2892. At your request, on January 8, 1991, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of MUR 2892 prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. This agreement includes Minami Group (USA), Inc.'s contributions in both MURs 3004 and 2892, now merged into MUR 2892, and thus represents a complete resolution of your client's liability. If your client agrees with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light

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of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Factual and Legal Analysis
Conciliation Agreement

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Minami Group (USA), Inc. **MUR 2892**

I. BACKGROUND

The Office of the General Counsel received a complaint on November 13, 1989 (MUR 3004), alleging that thirty persons, as foreign nationals, impermissibly contributed to state election campaigns in violation of 2 U.S.C. § 441e. The Commission determined to merge this matter with MUR 2892.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaint is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

The prohibition that was also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) stated:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

In late 1989 the Commission amended this regulation to include a ban on expenditures and added in a new § 110.4(a)(3) that codified the Commission's Advisory Opinions interpreting 2 U.S.C. § 441e:

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> (3) A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, or political committee, with regard to such person's Federal or nonfederal election-related activities, such as decisions concerning the making of contributions or expenditures in connection with elections for any local, State, or Federal office or decisions concerning the administration of a political committee.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction

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because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates," terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

they argue the regulation at 11 C.F.R. § 110.4 is overly broad.[3] As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office," defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. § 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentations of campaign authority).

sections of the Act dealing solely with federal elections.[5] The legislative history of section 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this statutory language is similar to if not broader than" § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office," and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well as to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113 - 114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress' intent to reach beyond federal election. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"), 52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S.C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also Brock v. Peabody Coal Co., 822 F.2d 1134, 1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

(Footnote 6 continued from previous page)
interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress' concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore, respondents' argument of statutory construction must fail.

2. TENTH AMENDMENT CONCERNS

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the

7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to

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regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

This matter involves contributions by corporations that are alleged to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including corporations, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. Furthermore, in its advisory opinions, the Commission has

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addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contributions. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL ANALYSIS

Minami Group (USA), Inc. included in its response to the Commission's reason to believe finding in MUR 2892 an affidavit by a foreign national, Minami's Executive Vice-President, stating that he made the contribution decisions. Therefore, there is reason to believe that Minami Group (USA), Inc. violated 2 U.S.C. § 441e regarding its MUR 3004 contribution.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

February 11, 1991

Mr. Karl K. Kobayashi, Esq.
Carlsmith, Wichman, Case,
Mukai, and Ichiki
1001 Bishop Street
Pacific Tower, Suite 2200
Honolulu, HI 96813

RE: MUR 3004 & 2892
Taiyo Hawaii Company, Ltd.

Dear Mr. Kobayashi:

On November 20, 1989, the Federal Election Commission notified your client, Taiyo Hawaii Company, Ltd., of a complaint in MUR 3004 alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"), with regard to the contributions alleged in MUR 3004. A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on January 8, 1991, found that there is reason to believe Taiyo Hawaii Company, Ltd., violated 2 U.S.C. § 441e, a provision of the Act, in MUR 3004. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. Also on that date the Commission determined to merge MUR 3004 with MUR 2892. You should now refer to this matter as MUR 2892.

Previously, on May 1, 1990, the Federal Election Commission found reason to believe in MUR 2892 that Taiyo Hawaii Company, Ltd. violated 2 U.S.C. § 441e regarding its contributions in MUR 2892. At your request, on January 8, 1991, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of MUR 2892 prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. This agreement includes Taiyo Hawaii Company, Ltd.'s contributions in both MURs 3004 and 2892, now merged into MUR 2892, and thus represents a complete resolution of your client's liability. If your client agrees with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light

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of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Factual and Legal Analysis
Conciliation Agreement

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Taiyo Hawaii Company, Ltd. MUR 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on November 13, 1989 (MUR 3004), alleging that thirty persons, as foreign nationals, impermissibly contributed to state election campaigns in violation of 2 U.S.C. § 441e. The Commission determined to merge this matter with MUR 2892.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaint is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

The prohibition that was also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) stated:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

In late 1989 the Commission amended this regulation to include a ban on expenditures and added in a new § 110.4(a)(3) that codified the Commission's Advisory Opinions interpreting 2 U.S.C. § 441e:

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> (3) A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, or political committee, with regard to such person's Federal or nonfederal election-related activities, such as decisions concerning the making of contributions or expenditures in connection with elections for any local, State, or Federal office or decisions concerning the administration of a political committee.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction

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because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates," terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

they argue the regulation at 11 C.F.R. § 110.4 is overly broad.[3] As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office," defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. § 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentations of campaign authority).

sections of the Act dealing solely with federal elections.[5] The legislative history of section 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this statutory language is similar to if not broader than" § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office," and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well as to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113 - 114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress' intent to reach beyond federal election. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"), 52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S.C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the

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In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore, respondents' argument of statutory construction must fail.

2. **TENTH AMENDMENT CONCERNS**

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the

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regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

This matter involves contributions by corporations that are alleged to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including corporations, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. Furthermore, in its advisory opinions, the Commission has

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addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contributions. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL ANALYSIS

Taiyo Hawaii Company, Ltd., admits in its response to the Commission's reason to believe finding in MUR 2892 as well as in its MUR 3004 response to the complaint that it is a foreign national. It contests the applicability of section 441e to the activity in question. In light of its admission, however, there is reason to believe Taiyo Hawaii violated 2 U.S.C. § 441e regarding its MUR 3004 contribution.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

February 11, 1991

Mr. Michael K. Tanigawa
Tanigawa & Tanigawa
Suite 1550 Pacific Tower
1001 Bishop Street
Honolulu, HI 96813

RE: MUR 3004 & 2892
Japan Travel Bureau
International, Inc.

Dear Mr. Tanigawa:

On November 20, 1989, the Federal Election Commission notified your client, Japan Travel Bureau International, Inc., of a complaint in MUR 3004 alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"), with regard to the contributions alleged in MUR 3004. A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on January 8, 1991, found that there is reason to believe Japan Travel Bureau International, Inc. violated 2 U.S.C. § 441e, a provision of the Act, in MUR 3004. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. Also on that date the Commission determined to merge MUR 3004 with MUR 2892. You should now refer to this matter as MUR 2892.

Previously, on May 1, 1990, the Federal Election Commission found reason to believe in MUR 2892 that Japan Travel Bureau International, Inc. violated 2 U.S.C. § 441e regarding its contributions in MUR 2892. At your request, on January 8, 1991, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of MUR 2892 prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. This agreement includes Japan Travel Bureau International, Inc.'s contributions in both MURs 3004 and 2892, now merged into MUR 2892, and thus represents a complete resolution of your client's liability. If your client agrees with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission.

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In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Factual and Legal Analysis
Conciliation Agreement

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Japan Travel Bureau International, Inc. MUR 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on November 13, 1989 (MUR 3004), alleging that thirty persons, as foreign nationals, impermissibly contributed to state election campaigns in violation of 2 U.S.C. § 441e. The Commission determined to merge this matter with MUR 2892.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaint is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

The prohibition that was also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) stated:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

In late 1989 the Commission amended this regulation to include a ban on expenditures and added in a new § 110.4(a)(3) that codified the Commission's Advisory Opinions interpreting 2 U.S.C. § 441e:

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> (3) A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, or political committee, with regard to such person's Federal or nonfederal election-related activities, such as decisions concerning the making of contributions or expenditures in connection with elections for any local, State, or Federal office or decisions concerning the administration of a political committee.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction

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because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates," terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

they argue the regulation at 11 C.F.R. § 110.4 is overly broad.[3] As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office," defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. § 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentations of campaign authority).

sections of the Act dealing solely with federal elections.[5] The legislative history of section 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this statutory language is similar to if not broader than" § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office," and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well as to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113 - 114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress' intent to reach beyond federal election. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"), 52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S.C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the

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Finally, respondents argue that because "contribution" as defined at § 431(8) refers to "any election for Federal office" section 441e's reference to "contribution" can only refer to federal elections. This is simply not the case. Rather, it is well settled that the

> natural presumption that identical words used in different parts of the same Act are intended to have the same meaning .... is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent. Where ... the conditions are different, or the scope of the legislative powers exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed.

Atlantic Cleaners & Dyers v. United States, 286 U.S. 427, 433 (1932). See also Brock v. Peabody Coal Co., 822 F.2d 1134, 1151 (D.C. Cir. 1987) (R. Ginsburg, J., concurring); Bituminous Coal Operators' Ass'n. v. Hathaway, 406 F. Supp. 372, 375 (W.D. Va. 1975), aff'd, 547 F.2d 240 (4th Cir. 1977).

(Footnote 6 continued from previous page)
interests of foreign principals where their activities are political in nature or border on the political." H.R. Rep. No. 1470, 89th Cong., 1st Sess., reprinted in 1966 U.S. Code Cong. & Admin. News 2397, 2398. Moreover, when the provision was amended as part of the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263, the author of the amendment noted Congress' concern with foreign influence over "American political candidates," and broadly stated that the provision "would ban the contributions of foreign nationals to campaign funds in American political campaigns." 120 Cong. Rec. 8782 (March 28, 1974) (statement of Senator Bentsen), reprinted in Legislative History of the Federal Election Campaign Amendments of 1974 at 264. See also id. ("I am saying that contributions by foreigners are wrong and they have no place in the American political system.").

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In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore, respondents' argument of statutory construction must fail.

2. TENTH AMENDMENT CONCERNS

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the

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7. The Commission's consistent interpretation giving force to this statutory language would be afforded great deference by the courts. See, e.g., F.E.C. v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 36-37 (1981).

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United States Constitution. This amendment reserves to the states "powers not delegated to the United States by the Constitution, nor prohibited by it to the states." Citing Oregon v. Mitchell, 400 U.S. 112 (1970), respondents argue that because states have been recognized as having the right to establish and maintain separate and independent governments, and "to determine within the powers of the constitution the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices...," Id. at 125, the State of Hawaii is constitutionally entitled to permit foreign nationals to fund its elections.

Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to

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regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

This matter involves contributions by corporations that are alleged to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including corporations, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. Furthermore, in its advisory opinions, the Commission has

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addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contributions. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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III. FACTUAL ANALYSIS

Japan Travel Bureau International, Inc. indicated in its response to the Commission's reason to believe finding in MUR 2892 that Masao Hayashi, a foreign national, played a role in its contribution decision-making. The MUR 3004 complaint, in addition to alleged contributions by Japan Travel Bureau, also noted a contribution by "Masao Hayashi Japan Travel International, Inc." to state Representative Romy Cachola on February 23, 1989. It appears that this contribution in fact was also made by Japan Travel Bureau. Therefore, there is reason to believe that Japan Travel Bureau International violated 2 U.S.C. § 441e regarding its contributions in MUR 3004 including the above-noted "Masao Hayashi Japan Travel International" contribution.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 21, 1991

Raymond S. Iwamoto, Esq.
Goodsill, Anderson, Quinn & Stifel
130 Merchant Street
16th Floor, Bancorp Tower
Financial Plaza of the Pacific
Honolulu, HI 96813

RE: MURs 3004 & 2892
Azabu U.S.A. Corporation

Dear Mr. Iwamoto:

On November 20, 1989, the Federal Election Commission notified your client, Azabu U.S.A. Corporation, of a complaint in MUR 3004 alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"), with regard to the contribution alleged in MUR 3004. A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on January 8, 1991, found that there is reason to believe Azabu U.S.A. Corporation violated 2 U.S.C. § 441e, a provision of the Act, in MUR 3004. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. Also on that date the Commission determined to merge MUR 3004 with MUR 2892. You should now refer to this matter as MUR 2892.

Previously, on May 1, 1990, the Federal Election Commission found reason to believe in MUR 2892 that Azabu U.S.A. Corporation violated 2 U.S.C. §441e regarding its contributions in MUR 2892. The Commission received your responses to its questions in that matter, and the additional enclosed questions apply to Azabu U.S.A. Corporation's contributions in both MURs 3004 and 2892, both now referred to as MUR 2892. Please submit answers to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

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In the absence of any additional information demonstrating that no further action should be taken against Azabu U.S.A. Corporation, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Questions
Factual & Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Azabu U.S.A. Corporation **MUR 2892**

I. BACKGROUND

The Office of the General Counsel received a complaint on November 13, 1989 (MUR 3004), alleging that thirty persons, as foreign nationals, impermissibly contributed to state election campaigns in violation of 2 U.S.C. § 441e. The Commission determined to merge this matter with MUR 2892.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaint is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

The prohibition that was also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) stated:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

In late 1989 the Commission amended this regulation to include a ban on expenditures and added in a new § 110.4(a)(3) that codified the Commission's Advisory Opinions interpreting 2 U.S.C. § 441e:

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> (3) A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, or political committee, with regard to such person's Federal or nonfederal election-related activities, such as decisions concerning the making of contributions or expenditures in connection with elections for any local, State, or Federal office or decisions concerning the administration of a political committee.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction

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because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates," terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

they argue the regulation at 11 C.F.R. § 110.4 is overly broad.[3] As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office," defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. § 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentations of campaign authority).

sections of the Act dealing solely with federal elections.[5] The legislative history of section 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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5. One respondent points to section 441c, which in subsection (a)(1) prohibits federal contractors from contributing "to any political party, committee, or candidate for public office," and argues that "this statutory language is similar to if not broader than" § 441e's language, yet is applied only to federal elections. Subsection (b), however, which permits federal contractors to maintain separate segregated funds for the purpose of influencing elections, explicitly refers to elections for "Federal office," and the Commission long ago reasoned that this limitation must be imported into subsection (a) as well as to prevent an anomalous result. See A.O. 1975-99, 1 Fed. Election Camp. Fin. Guide, ¶ 5171 at pp. 10,113 - 114, codified at 11 C.F.R. § 115.2(a) (prohibition on federal contractors applicable only to federal elections).

6. While not as explicit, the legislative history of section 441e also confirms Congress' intent to reach beyond federal election. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"), 52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S.C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the

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In this instance we have demonstrated that Congress used specific statutory language ("any political office") to reach beyond federal elections in only two instances: the prohibition of national bank contributions at section 441b(a) and the prohibition of foreign national contributions at section 441e. Thus, upon consideration of "the circumstances under which the language ... [is] employed," Atlantic Cleaners, 286 U.S. at 433, the phrase "contribution of money or other things of value" in section 441e must be read more broadly than "contribution" as defined at section 431(8). Indeed, respondents' reading of section 441e would render superfluous the phrase "any political office," and would do so in the face of legislative history as to its intended scope. It is a cardinal principle of statutory construction, however, that statutes should be interpreted to give force to the language chosen by Congress, and interpretations which render statutory language meaningless are to be avoided. See, e.g., U.S. v. Fausto, 108 S. Ct. 668, 675-76 (1988).

In sum, the statutory structure and legislative history demonstrates that Congress intended "any political office" to apply to federal, state and local elections.[7] Therefore, respondents' argument of statutory construction must fail.

2. TENTH AMENDMENT CONCERNS

Other respondents argue that the Commission's assertion of jurisdiction in this matter violates the Tenth Amendment to the

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Oregon struck down the age requirements provision for the Voting Rights Act Amendments of 1970, finding age limitations valid as to national elections but invalid as to state elections. The Court reasoned that the Article 1, Section 2 of the Constitution reserves to the state the power to regulate state and local elections. Thus, respondents' assertion that Oregon relies on the Tenth Amendment is flawed. In fact, Oregon merely addressed states' powers to regulate participation, by age, in state and local elections, but did not address the quite different issue presented in this matter, i.e. expanding the electoral process to include foreign nationals. Such inclusion interjects the state into aspects of foreign policy and immigration that are acknowledged areas of federal domain. See Toll v. Moreno, 458 U.S. 1, 10 (1982) (reaffirmation of the federal constitutional power over aliens via Article I, § 8 cl.4 [authority to establish uniform Rule of naturalization] and Article I, § 8 cl.3. [power to

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regulate commerce with foreign nationals and inherent power over foreign affairs]). Moreover, the Oregon court recognized that the federal government can indeed regulate certain aspects of state elections impinging upon federally protected interests, i.e. literary tests, poll taxes, and other vestiges of racial discrimination. In this instance the Act is similarly interjected in an area of apparent state domain to assert a constitutionally recognized federal interest over foreign affairs.

Respondents' reliance on the Tenth Amendment adds nothing to their argument. The Supreme Court has only recently reaffirmed that "Tenth Amendment limits on Congress' authority to regulate state activities . . . . are structural, not substantive--i.e., that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity." South Carolina v. Baker, 108 S. Ct. 1355, 1360 (1988), citing Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985) (overruling National League of Cities v. Usery, 426 U.S. 833 (1976)). Therefore, respondents' jurisdictional arguments are without foundation.

C. THE COMMISSION'S INTERPRETATION AND APPLICATION OF SECTION 441e

This matter involves contributions by corporations that are alleged to be foreign nationals. Initially, it is clear that the Act prohibits contributions from persons, including corporations, who are foreign nationals. 2 U.S.C. § 441e. See A.O. 1983-31. Furthermore, in its advisory opinions, the Commission has

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addressed the issue whether a corporation that is not a foreign national, but is a domestic subsidiary of a foreign national parent, may make contributions in connection with state and local campaigns for political office. In addressing this issue the Commission has looked to two factors: the source of the funds used to make the contributions and the status of the decision makers. Regarding the source of funds, the Commission has not permitted such contributions by a domestic subsidiary where the source of funds is the foreign national parent, reasoning that this essentially permits the foreign national to make contributions indirectly when it could not do so directly. See, e.g., A.O.s 1985-3 and 1981-36.

Moreover, even if the funds in question are from a domestic subsidiary, the Commission also requires that the status of the decision makers must be examined. The Commission has conditioned its approval of contributions by domestic subsidiaries of foreign nationals by requiring that no director or officer of the company or its parent who is a foreign national may participate in any way in the decision making process regarding the proposed contributions. This, in turn, requires an examination of the nationalities of the decision makers, specifically the officers and directors in instances where a corporation is implicated. See A.O.s 1985-3, 1982-10 and 1989-20.

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Azabu U.S.A. Corporation stated in its response to the Commission's reason to believe finding in MUR 2892 that it is incorporated in Hawaii and owned by a foreign corporation. The funds used for the contributions were derived from domestic operations. The individual identified as deciding for Azabu to whom to make contributions was a permanent resident alien who became a naturalized U.S. citizen in August, 1989. The officers and directors of Azabu are mostly foreign nationals. One of Azabu's six directors is a U.S. citizen. Four of its nine officers are U.S. citizens or permanent resident aliens. Given the imbalance in the citizenship of Azabu's management, the Commission questions the role of the asserted contribution decision-maker, and therefore there is reason to believe that Azabu U.S.A. Corporation violated 2 U.S.C. § 441e.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2892
	)	
	)	

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Azabu U.S.A. Corporation

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within 15 days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1986 to the present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding, the nationality of such person and whether such person is a United States citizens or a permanent resident alien of the United States. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

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"Nationality status" with respect to individuals shall mean country of citizenship and the country of permanent residence, if other than the country of citizenship.

"Nationality status" with respect to corporations shall mean the country of incorporation.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES

TO: Azabu U.S.A. Corporation MUR 2892

1. Describe each step of the process by which you made each contribution from January 1, 1986 through the present, including the identification (including nationality status) of the individuals who made the decision to make the contribution, the individuals who in any way participated in the decision, the individuals who carried out the contribution, and the individuals who in any other way participated in the making of the contribution. In addition, identify any individuals who could have overrode such contribution decision made by the individuals identified above.

2. State the source of funds used to make the contributions, including from which account the contributions were made and the sources of funds for this account. State whether any contribution funds were provided directly or indirectly by a foreign national.

3. If you are a subsidiary of another entity, do you receive any transfers of funds from your parent? If so, describe in detail.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

February 21, 1991

Raymond S. Iwamoto, Esq.
Goodsill, Anderson, Quinn & Stifel
130 Merchant Street
16th Floor, Bancorp Tower
Financial Plaza of the Pacific
Honolulu, HI 96813

RE: MURs 3004 & 2892
Azabu Realty, Inc.

Dear Mr. Iwamoto:

On November 20, 1989, the Federal Election Commission notified your client, Azabu Realty, Inc., of a complaint in MUR 3004 alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"), with regard to the contributions alleged in MUR 3004. A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on January 8, 1991, found that there is reason to believe Azabu Realty, Inc. violated 2 U.S.C. § 441e, a provision of the Act, in MUR 3004. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. Also on that date the Commission determined to merge MUR 3004 with MUR 2892. You should now refer to this matter as MUR 2892.

Previously, on May 1, 1990, the Federal Election Commission found reason to believe in MUR 2892 that Azabu Realty, Inc. violated 2 U.S.C. § 441e regarding its contributions in MUR 2892. The Commission received your responses to its questions in that matter, and the additional enclosed questions apply to Azabu Realty, Inc.'s contributions in both MURs 3004 and 2892, both now referred to as MUR 2892. Please submit answers to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against Azabu Realty, Inc., the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Todd Hageman, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

John Warren McGarry

John Warren McGarry
Chairman

Enclosures
Questions
Factual & Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Azabu Realty, Inc. MUR 2892

I. BACKGROUND

The Office of the General Counsel received a complaint on November 13, 1989 (MUR 3004), alleging that thirty persons, as foreign nationals, impermissibly contributed to state election campaigns in violation of 2 U.S.C. § 441e. The Commission determined to merge this matter with MUR 2892.

II. LEGAL ANALYSIS

A. THE LAW

The basis of the complaint is the Act's prohibition on contributions from foreign nationals at 2 U.S.C. § 441e. This provision states:

> (a) It shall be unlawful for a foreign national directly or through any other person to make any contribution of money or other thing of value, or to promise expressly or impliedly to make any such contribution, in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

The prohibition that was also included in the Commission's Regulations at 11 C.F.R. § 110.4(a)(1) stated:

> A foreign national shall not directly or through any other person make a contribution, or expressly or impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State, or Federal public office.

In late 1989 the Commission amended this regulation to include a ban on expenditures and added in a new § 110.4(a)(3) that codified the Commission's Advisory Opinions interpreting 2 U.S.C. § 441e:

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> (3) A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, or political committee, with regard to such person's Federal or nonfederal election-related activities, such as decisions concerning the making of contributions or expenditures in connection with elections for any local, State, or Federal office or decisions concerning the administration of a political committee.

Further, no person shall solicit, accept, or receive a contribution as set out in 11 C.F.R. § 110.4(a)(1) from a foreign national. 11 C.F.R. § 110.4(a)(2).

The term "foreign national" is defined at 2 U.S.C. § 441e(b)(1) as, inter alia, a "foreign principal" as that term is defined at 22 U.S.C. § 611(b). Under § 611(b), a "foreign principal" includes:

> (1) a government of a foreign country and a foreign political party;
>
> (2) a person outside the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
>
> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

The Act further provides that resident aliens are excluded from the definition of "foreign national". See 2 U.S.C. § 441e(b)(2).

B. CHALLENGES TO JURISDICTION

As an initial matter, the issue of the Commission's jurisdiction is addressed. A number of respondents have submitted responses arguing that the Commission is without jurisdiction

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because the contributions in question are not prohibited by Hawaii state law.[1] These arguments rest upon two independent legal bases. First, a number of respondents argue that the Commission lacks jurisdiction because section 441e does not explicitly prohibit contributions to state and local elections. Additionally, other respondents argue that the Commission cannot assert jurisdiction in this matter without violating the Tenth Amendment to the United States Constitution. Each argument is discussed separately below.[2]

1. STATE COMMITTEES ACCEPTING CONTRIBUTIONS FROM FOREIGN NATIONALS ARE WITHIN THE PURVIEW OF SECTION 441e

As noted above, respondents first argue that section 441e's prohibition is inapplicable to state and local elections because this section does not expressly address such elections. Respondents note that section 441e addresses "contributions" and "candidates," terms which are defined at 2 U.S.C. § 431 as applicable to federal elections and office. Although respondents acknowledge that the Commission's Regulations do prohibit contributions by foreign nationals to state and local elections,

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1. Hawaii law permits contributions from corporations and does not explicitly prohibit contributions from foreign nationals. See Hawaii Revised Statutes § 11 et. seq.

2. A number of respondents note that they relied upon representations of Hawaii's attorney general that contributions from foreign nationals to state political committees were permissible.

they argue the regulation at 11 C.F.R. § 110.4 is overly broad.[3] As discussed below, the Commission's long-standing interpretation of section 441e is supported by the language and structure of the statute, as well as the relevant legislative history. Therefore, section 441e's prohibitions are appropriately applied to state and local elections.

Initially it is clear that section 441e expressly prohibits contributions by foreign nationals to "any political office," (emphasis added). The phrase "any political office" appears but twice in the Act; at this section and in section 441b(a) (prohibition of contributions from national banks). The Commission has promulgated Regulations for both these sections, consistently interpreting each as applying to federal, state and local elections. See 11 C.F.R. §§ 110.4 and 114.2. In contrast, the Act contains numerous references to "Federal office," defined at 2 U.S.C. § 431(3) to refer solely to federal elections.[4] Consequently, section 441e's reference to "any political office" is correctly read as applying to federal, state, and local elections, and is distinguished by its plain language from

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3. Since the operative language of 11 C.F.R. § 110.4 was first adopted in 1976, the Commission has consistently taken the position in both enforcement matters and in advisory opinions that section 441e applies to state and local elections, as well as federal elections. See, e.g., A.O.s 1979-59, 1985-3, 1982-10, 1985-3, 1989-20; and MURs 1859, 1159, and 2165.

4. See, e.g., section 432(e)(1) (designation of principal campaign committee); section 439a (use of contributed amounts for certain purposes); section 441a(a)(1)(A) and (2)(A) (limitations on contributions to authorized committees); section 441g (limitations on contributions in currency); section 441h (fraudulent misrepresentations of campaign authority).

sections of the Act dealing solely with federal elections.[5] The legislative history of section 441b's statutory predecessor (18 U.S.C. § 610) is unequivocal that "any political office" was intended to apply to federal, state and local elections:

> The effect of this provision is to make it unlawful for any corporation, [organized by authority of any laws of Congress], no matter what its character may be, to make a contribution "in connection with any election to any political office" without regard to whether the election be national, State, county, township, or municipal. The Congress has the undoubted right thus to restrict and regulate corporations of its own creation.

U.S. v. Clifford, 409 F. Supp. 1070, 1073 (E.D.N.Y. 1976), quoting S. Rep. No. 3065, 59th Congress, 1st Sess. 2 (1906). Accordingly, there remains little doubt of Congressional intent as to the scope of this phrase, and no serious question but that Congress intended both section 441e and the national bank prohibition at section 441b to apply to state and local elections.[6]

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6. While not as explicit, the legislative history of section 441e also confirms Congress' intent to reach beyond federal election. Section 441e's operative language originated in an amendment to the Foreign Agents Registration Act of 1938 ("FARA"), 52 Stat. 631-633, as amended in relevant part in 1942, 1966 and 1984, codified at 22 U.S.C. §§ 611-621. The 1966 amendments sought "to protect the interests of the United States by requiring complete public disclosure by persons acting for or in the

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