FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3938

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January 31, 1994

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FEDERAL ELECTION COMMISSION

Federal Elections Commission
999 E. Street NW
Washington, DC 20463

To Whom It May Concern:

I am writing to file a complaint against the Lenora B. Fulani for President '92 campaign, due to the fact that I was listed on her campaign records as receiving $500 that I never received, nor knew anything about. I discovered this in March of 1993 when I was told that her campaign was writing checks and cashing them with forged signatures at Amalgamated Bank. I was one of many people that I know of that were listed on her campaign records that never received the money we were listed as having received. I immediately reported this to the Manhattan District Attorney's Office and they have been investigating this for the past year. Since there appears to be a lot of federal elections fraud, I would like your office to investigate this matter. I am enclosing my statement to the Manhattan District Attorney's Office and an article written by the Daily News. Please call or write me at the address and phone numbers listed below.

Sincerely,

Kellie Gasink

Kellie Gasink

3150 Rochambeau Ave. #41D
Bronx, NY 10467

SHARON I. BRAUNSTEIN
Notary Public, State of New York
No. 41-5006908
Qualified in Queens County
Commission Expires January 11, 1995

Sharon Braunstein

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June 10, 1993

RECEIVED FEDERAL ELECTION COMMISSION 94 FEB -7 PM 3:39

Manhattan District Attorney
Racquets Unit
Attention: ADA Conroy

Gentlemen:

I, Kellie Gasink, am writing to inform you that I worked on the Lenora B. Fulani For President Campaign '92 as a volunteer. I worked with Lenora Fulani from 1988 through 1992 and I worked on the recent campaign in 1991 through Nov. 1992. From what I observed, the campaign was conducted in a fraudulent manner and I have reason to believe that Fulani's campaign manager, Fred Newman, embezzled money from the campaign.

Fred Newman controls an underground organization called the International Worker's Party (IWP), consisting of approximately 300 people. The IWP is a classical Marxist-Leninist organization that shares with other marxist organizations the strategy of smashing the bourgeois state. Potential members are asked to join this conspiracy. The IWP is cadre organization (a military organization) and it is a cult. The commander-in-chief is Fred Newman. The members are sworn to loyalty and obedience to Newman. The IWP is divided into cells of five to eight people that meet once every two weeks in public restaurants (public to avoid FBI detection). IWP activities are never spoken of outside of these meetings and to do so would be a "breach of security". Members receive secret orders from Newman that are destroyed by the cell leaders after transmission. IWP dues are collected at that time. The dues, after other Newman levies are collected, amount to 60% or more of a member's income. The organization has fifteen semi-automatic assault rifles and pistols--that I know of. About 20 current members are trained to use them. Members are regularly intimidated into silence by Newman's "goon squads", which he calls "security". This organization is communist and not terrorist. There are former terrorists in the organization, however, they have long since renounced terrorism in leu of Newman's strategy, which in part called for the building of popular mass organizations in the mainstream to build enough support in this country to make revolution. This organization has internally been declining since 1989.

The underground has always had its own economy separate from Newman's public organizations. Newman has private supporters of his communist work that contribute in the millions of dollars each year. Newman also taxes his members whether they work for a Newman organization or not. Up to 60% of a member's income is given back to Newman in cash, all of which goes into the underground. Newman also takes money from his public organizations and puts it in the underground. The underground does things such as buy firearms, give money to groups in other countries that are fighting oppressive governments; M19, groups in Haiti, groups in Zaire and other countries in Africa, etc. The IWP also

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purchased the tickets that Rev. Sharpton used when he rallied a group of people to take over Liberty Island for which Sharpton was subsequently arrested.

Newman was once affiliated with Lynden LaRousche and like LaRousche seems more interested in fraud and embezzlement than anything else. Newman stole money from the Fulani campaign which had raised $4.3 million dollars. I have examined a copy of the FEC documents that detail how this money was spent. These FEC expenditure reports are fabricated and false. By which I mean intentionally false. The documents do not appear to contain any mistakes, but instead are a rather well crafted fabrication to cover over Newman's embezzlement. The campaign expenditures can be divided into three categories: payments to Newman organizations, payments to organizations & companies not controlled by Newman, and payments to individuals.

1. Newman has a network of organizations that are under his exclusive control. The Newman organizations that are listed as having received campaign money are:

Automated Business Services
Castillo Cultural Center
Castillo Communications
C.A.K.I.M.
Community Literacy Research Project (CLRP) (501-C3)
Fred Newman Productions
MusiCruise
National Alliance Newspaper
New Alliance Productions
Newman & Bruan
Ilene Advertising
International People's Law Institution (IPLI)
Rainbow Lobby

Although Newman is not the listed director of all these entities, he controls their bank accounts and directs their functions. Most of these organizations exist only on paper as bank accounts and legal fictions. E.G. these organizations currently occupy only two offices: 200 W. 72nd Street, room 302, NYC and 500 Greenwich St., 2nd Floor, NYC. According to FEC documents, these businesses were paid nearly $1 million dollars by the Fulani campaign, however they delivered almost no goods and services to the campaign and Newman later took this money. In many cases the expenses that were billed to the campaign from Newman organizations were double billed or were fabricated. E.G. Castillo Communications handled all the media relations and media ads for the campaign. Castillo Communications has three employees, only one of which is on salary. The person who is on salary is a fundraiser and although she was paid $300 a week during the campaign, she canvassed in the evening to raise $300 a week to support this salary. Castillo Communications is run out of a larger complex of Newman's organizations and consists of two phones and a fax machine that people used to send press releases to the media, speak with the

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Another example is the International People's Law Institution, which is a law firm directed by Attorney Alvaader Frazier; however, controlled by Fred Newman. Ms. Frazier cannot practice law in New York State where the firm is located and her law license was suspended in California. Although this "law firm" has no office or phone listing, it was paid approximately $200,000 by the campaign. None of the IPLI attorneys received money paid to IPLI by the Fulani campaign. The two lawyers from this firm who actually did work for the campaign, Gary Sinawski and Art Block, billed individually for their services. Olga Simon billed individually for legal research. The IPLI as such did no work for the campaign and this billing was used for Newman to take money from the campaign. Attorney Michael Hardy, a partner who left this firm in 1992 believing Newman was embezzling money with Frazier's help, never received any money from IPLI. The other attorney at IPLI is Harry Kresky who did not do work for the campaign and did not receive any money from the campaign. Frazier is willing to help Newman embezzle money because she is retired and is not practicing law and she receives four thousand dollars a month for the cover she provides.

Fran Miller is a non-practicing attorney who was the campaign treasurer and compliance officer who wrote and falsified the FEC reports.

The organizations C.A.K.I.M., MUSICRUISE, Rainbow Lobby, and Newman & Braun all closed down after receiving campaign money. They provided no goods or services to the campaign. Ilene Advertising received a ton of money for designing the campaign brochure and fliers, and at Newman's instruction, kicked this money back to the CLRP. The CLRP is a not-for-profit organization that exists only on paper, and is an account controlled by Newman. It is directed by one of Newman's five wives, Gabrielle Kurlander. Automated Business Services, Castillo Cultural Center and New Alliance Productions did not do any work for the campaign. Fred Newman Productions is simply a Fred Newman bank account. Fred Newman Productions was paid $70,000 for consulting, presumedly this was his salary. The National Alliance Newspaper exists but is separate from the campaign, is given away free to the public and the amount charged by the Newspaper to the campaign was more than the cost to produce the Newspaper for two years. The Newspaper was only delivered to and used by the campaign during the New Hampshire Primary. Thus, the campaign only received one week's edition. A lot of the money given to these Newman organizations was then taken out of their accounts by Newman using a very sophisticated

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technique to falsify the books.

2. Another way in which Newman took money from the campaign was through phoney salaries and reimbursements. The salaries that are listed are primarily to IWP members or conspirators in a sense. These salaries are highly suspect for two reasons. First, only full time campaign workers were really paid. Because they are Newman cultists, 60% of this money was handed directly back to Newman in cash in IWP meetings. Salaries are intentionally inflated and Newman would order the money to be given back to him. In 1991, the salary for a Newman cultist was $250 a week or less before Newman's taxes. In 1992, the average salary allowed was increased to $275 a week. However, some campaign workers are listed as receiving $500 a week or so and they would give this back to Newman in cash. Second, Newman cultists who did volunteer work for the campaign were listed as having received money and reimbursements that they never received. During the campaign, myself and other IWP members were asked to collect receipts and bills and turn them over to Fran Miller (non-campaign related bills and receipts). I refused to turn over any receipts. Two weeks ago, I looked at a complete version of the FEC records filed for the campaign and I saw my name listed as having been paid $500 for "clerical services" which I never did and for which I was never paid and about which I know nothing. I also saw phoney reimbursements. E.G., I was helping run the national telemarketing operation and Shelley Karliner, the manager of this operation, is listed as having been reimbursed for telemarketing dinners on three occasions for $2,000. There never were any telemarketing dinners! I am listing isolated examples, but all the payments to IWP look fraudulent except the full time campaign staff.

Newman had been "hinting" to myself and other IWP members that he wasn't spending more than a million dollars for the campaign; however, I was only able to confirm this when I looked at the complete FEC records. Newman was not letting people know in the IWP how he was diverting the campaign money. Many IWP members, like myself, were expelled for questioning Newman's graft. So far the people who I have spoken to (mostly former IWP members) who were listed as having received money have said they never received any money from the campaign. Here are some examples:

Kellie Gasink	$500
William Pleasant	$450
Willie Harris	$450
Valeh Abbasi	$450
Dorris Kelly	$1275
BJ Lee	$1015
Wilton Duckworth	$1000

Another former IWP member, who wishes to remain anonymous, has said that there were checks written for each of these alleged payments and that Fran Miller was able to cash these checks at Amalgamated Bank where the campaign and other Newman organizations conduct business. Apparently these checks were endorsed with forged

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signatures and cashed with check cashing cards made out to these fictitious employees also using forged signatures.

3. All cult members were ordered to contribute at least $250 to the campaign. We were specifically asked to pay our IWP dues (at the secret bi-weekly meetings) in contributions to the campaign. We were also asked to make contributions to CLRP and not told why. The contributions from cult members are all on the same days and there is a tremendous amount of kickbacks being given to the CLRP. I ask you to look into this because of the tremendous amount of intimidation used to get cadre (Newman's soldiers) to give money. Newman also gave people cash at times and asked them to contribute it back the campaign as checks or money orders. Newman figures if 300 people give the matchable limit ($250 in a presidential campaign) than his money of $75,000 is doubled to $150,000 fairly easily.

4. So as to be clear to people not familiar with this conspiracy, every person who is in the IWP knows every other member in the organization. IWP members live with other IWP members. IWP members meet periodically. There is a conference every two years in which all the members gather. Lenora Fulani is a member, although as far as I know she had no direct contact with the finances of her campaign. Fulani might not have known how much money was being taken from her campaign, but that is simply because she would have refused to allow herself to know. There is process by which people are told to know only what they "need to know" to follow orders. Because in the minds of conspirators knowing too much is dangerous, if Fulani were told by Newman that she did not "need to know" how her campaign money was being spent--Fulani would simply not allow herself to know and she would ask no questions. So there is no misunderstandings, Rev. Sharpton is not, nor has he ever been, in the IWP. IWP members are communists and Sharpton is a nationalist. Sharpton's objectives are quite different from Newman's. Newman always supported Sharpton and Sharpton never wanted to get involved with IWP. Newman gave Sharpton a lot of money--Sharpton's car was bought by Newman and is registered in Newman's name, Sharpton's house in N.J. was financed by Newman, and Sharpton receives $12,000 a year from Newman although Sharpton does not work for this money. Sharpton has taken Newman's support and has for the most part stayed away from Newman and Fulani.

Newman does not carry a gun, but has guards around him that do, e.g. Jeff Aaron and John Fraire. Fran Miller carries a gun and she is an excellent shot. All of these people do regular weapons training. Jini Berman and Ed Costa supposedly have some of these guns registered in their names. I have never seen any gun registrations and some of the guns cannot be registered.

Since all of this appears to violate federal and state laws I ask that you investigate these matters fully.

Thank you,

Kellie Gasink

Kellie Gasink

Sharon Braunstein

SHARON I. BRAUNSTEIN
Notary Public, State of New York
No. 41-5006808
Qualified in Queens County
Commission Expires January 11, 1995

SHARON I. BRAUNSTEIN
Notary Public, State of New York
Qualified in Queens County
Commission Expires January 11, 1995

SHARON I. BRAUNSTEIN
Notary Public, State of New York
Commission Expires January 11, 1995

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FILENE IN The first customers enter the new Filene's Basement store at Broadway and W. 79th St. to hearty employe applause yesterday. New customers were dedicated enough to wait up to an hour and a half for the doors to open. Of course, New Yorkers had already had to wait a few generations for the store to make its Broadway debut following its long Boston run, longer even than it has been since the Red Sox won a World Series.

Fringe party funds investigated

By WILLIAM KLEINKNECHT
Daily News Staff Writer

The New Alliance Party, the fiery left-wing group that fielded Lenora Fulani in two presidential elections, is facing a criminal probe into its use of millions of dollars in federal campaign funds, the Daily News has learned.

The Manhattan district attorney's office is probing allegations that party founder Fred Newman pocketed some of the $4.4 million — nearly half of it federal matching funds — that was raised for Fulani's 1992 campaign, a source in the office said.

"We are looking into allegations of embezzlement," the source said. "We don't know where it's going to go."

The district attorney's investigators are peering into the shadowy world of a fringe party whose foot soldiers are a fixture in black and Latino neighborhoods but whose internal structure has been a closely guarded secret.

Fulani and her NAP followers have figured behind the scenes in many of the city's most heated political controversies, from Tawana Brawley's rape allegations to the recent occupation of Public School 156 by angry Brooklyn parents.

But several former NAP members who provided information to the district attorney's office say Fulani is just a mouthpiece. Newman, they say, is the real power behind NAP and the one holding the purse strings.

Four of those former associates told The News that Newman cashed checks listed in Federal Election Commission filings as having been paid to campaign workers.

Two of the associates also said that nearly $1 million of the campaign's money was spent on companies that are directly controlled by Newman and did little actual work for the campaign.

"The amount of money that went into these organizations that was actually spent on the campaign was microscopic," said William Pleasant, who until January was a high-ranking NAP member and editor of its newspaper, National Alliance.

Newman, citing his lawyers' advice, would not comment on specific allegations. But he denied money was used improperly and called the charges politically motivated.

"This is not unheard of on the American left," he said. "When people have not gotten what they wanted, they have become every manner of snitch and attacked those they were unable to persuade."

A 58-year-old psychotherapist and former follower of Lyndon LaRouche, Newman founded NAP in 1979 and has built it into a national left-wing party that raises millions of dollars in the name of blacks, Hispanics, gays and other minorities.

His practice of recruiting members through group psychotherapy sessions has prompted widespread denunciation of his party as a cult whose members are blindly obedient.

Critics also have accused the party of anti-Semitism and of exploiting political controversies for publicity.

1st criminal probe

But this is the first time a criminal probe has been publicly linked to NAP. The district attorney's office has jurisdiction in the case because embezzlement of an organization's money, even federal campaign money, violates state law.

The FEC would not comment on whether the agency also is investigating NAP.

FEC documents show $4.4 million was raised for Fulani's 1992 campaign, which put her on the ballot in 40 states. About $2 million was taxpayer dollars that came to the party as federal matching funds. The documents show $845,000 was spent on 11 profit-making businesses linked to NAP, including a publishing concern, an advertising agency, a public relations firm and a law office.

In a five-page letter to the Manhattan district attorney's office that sparked the probe, Kellie Gasink, a former Newman assistant, said most of the NAP-linked businesses that received money "exist only on paper as bank accounts."

For example, Castillo Communications, which received $220,000 for media work, had only three unsalaried employes, she said. The firm's only equipment, she said, were two phones and a fax machine, and their phone bills were paid separately by the campaign.

— With Daily News research assistant James Pokryzski

> **The amount of money that went into these organizations that was actually spent on the campaign was microscopic.**
>
> William Pleasant

Mob-class lawyer stays, judge rules

By JENNY CAPECE
Daily News Staff Writer

A federal judge yesterday refused to oust John Gotti's outspoken defense lawyer from the retrial of a reputed Gotti soldier, an effort the judge called a "desperate move" by prosecutors to "eliminate extremely capable counsel."

In a terse, one-page order, Judge Peter Leisure ruled that Bruce Cutler could represent Joseph Gambino at his retrial next week on drug, murder and racketeering charges.

Leisure will issue a full written opinion later, but during oral arguments Tuesday he said he was "not happy" with the motion to disqualify Cutler — calling prosecutors' arguments "strained (and) speculative."

Prosecutors didn't try to oust Cutler from Gambino's first trial — which ended in June with a hung jury — but said this time their move was forced by a recent appeals court ruling that threw out a conviction in a similar case.

Once bitten ...

But Leisure said the cases weren't similar, and besides, the government burned him before when he bought the prosecution's initial arguments that lawyer Charles Carnesi should not represent Gambino co-defendant Lorenzo Mannino in the first trial.

Prosecutors had sought Carnesi's ouster for U.S. Attorney Otto Obermaier, and it was granted, but later rescinded. Cutler's disqualification was pressed by prosecutors under current Manhattan U.S. Attorney Mary Jo White.

Leisure said the record of the first trial proved that Carnesi's disqualification was unnecessary and that he "was exceptional in his representation.... Mannino would have been handicapped if another lawyer had replaced him."

"With Mr. Cutler," said Leisure, "we got a man whose skills are exceptional, and there is every reason for a client to want to have him as his lawyer."

Prosecutor Patrick Fitzgerald said he and prosecutor Richard Zabel "acted the way the law forced us to act, and not for tactical reasons." But Leisure said the motion "reminds me of what I went through with Carnesi."

"It makes me wonder," said Leisure, "whether this isn't a desperate move by the government to try to eliminate an extremely capable counsel because of the situation."

Cutler, whom Brooklyn federal prosecutors successfully prevented from representing Gotti at his racketeering trial, said, "I feel great that I'm going to be allowed to do what I do, which is fight cases for people who need me."

White and Fitzpatrick declined to comment on the ruling.

Shots fired at mourners

LONG BEACH, Calif. (AP) — Six people were hurt, including a pregnant woman, after gunmen opened fire on 200 mourners attending a viewing for two people slain in a drug house attack last week, police said yesterday.

Friday, November 5, 1993 • DAILY NEWS

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 8, 1994

Kellie Gasink
3150 Rochambeau Avenue, #41D
Bronx, NY 10467

Dear Ms. Gasink:

This is to acknowledge receipt on February 7, 1994, of your letter dated January 31, 1994. The Federal Election Campaign Act of 1971, as amended ("the Act") and Commission Regulations require that the contents of a complaint meet certain specific requirements. One of these requirements is that a complaint be sworn to and signed in the presence of a notary public and notarized. Your letter was not properly sworn to.

In order to file a legally sufficient complaint, you must swear before a notary that the contents of your complaint are true to the best of your knowledge and the notary must represent as part of the jurat that such swearing occurred. The preferred form is "Subscribed and sworn to before me on this _____ day of _____, 19__." A statement by the notary that the complaint was sworn to and subscribed before her also will be sufficient. We regret the inconvenience that these requirements may cause you, but we are not statutorily empowered to proceed with the handling of a compliance action unless all the statutory requirements are fulfilled. See 2 U.S.C. § 437g.

Enclosed is a Commission brochure entitled "Filing a Complaint." I hope this material will be helpful to you should you wish to file a legally sufficient complaint with the Commission.

If you have any questions concerning this matter, please contact me at (202) 219-3410.

Sincerely,

Retha Dixon

Retha Dixon
Docket Chief

Enclosure

cc: Lenora B. Fulani for President

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January 31, 1994

Federal Elections Commission
999 E. Street NW
Washington, DC 20463

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SENSITIVE

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Kellie Gasink

Kellie Gasink

3150 Rochambeau Ave. #41D
Bronx, NY 10467

Subscribed and Sworn before me this 2nd day of Feb, 1994

ALISON C. [illegible]
Notary Public, State of New York
No. 41-[illegible]
Qualified in Queens County
Commission Expires 7-20 1994

Alison C. [illegible]

with

Kellie Gasink

Kellie Gasink

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June 10, 1993

FEDERAL RECEIVED COMMISSION
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Manhattan District Attorney
Racquets Unit
Attention: ADA Conroy

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technique to falsify the books.

2. Another way in which Newman took money from the campaign was through phoney salaries and reimbursements. The salaries that are listed are primarily to IWP members or conspirators in a sense. These salaries are highly suspect for two reasons. First, only full time campaign workers were really paid. Because they are Newman cultists, 60% of this money was handed directly back to Newman in cash in IWP meetings. Salaries are intentionally inflated and Newman would order the money to be given back to him. In 1991, the salary for a Newman cultist was $250 a week or less before Newman's taxes. In 1992, the average salary allowed was increased to $275 a week. However, some campaign workers are listed as receiving $500 a week or so and they would give this back to Newman in cash. Second, Newman cultists who did volunteer work for the campaign were listed as having received money and reimbursements that they never received. During the campaign, myself and other IWP members were asked to collect receipts and bills and turn them over to Fran Miller (non-campaign related bills and receipts). I refused to turn over any receipts. Two weeks ago, I looked at a complete version of the FEC records filed for the campaign and I saw my name listed as having been paid $500 for "clerical services" which I never did and for which I was never paid and about which I know nothing. I also saw phoney reimbursements. E.G., I was helping run the national telemarketing operation and Shelley Karliner, the manager of this operation, is listed as having been reimbursed for telemarketing dinners on three occasions for $2,000. There never were any telemarketing dinners! I am listing isolated examples, but all the payments to IWP look fraudulent except the full time campaign staff.

Newman had been "hinting" to myself and other IWP members that he wasn't spending more than a million dollars for the campaign; however, I was only able to confirm this when I looked at the complete FEC records. Newman was not letting people know in the IWP how he was diverting the campaign money. Many IWP members, like myself, were expelled for questioning Newman's graft. So far the people who I have spoken to (mostly former IWP members) who were listed as having received money have said they never received any money from the campaign. Here are some examples:

Kellie Gasink	$500
William Pleasant	$450
Willie Harris	$450
Valeh Abbasi	$450
Dorris Kelly	$1275
BJ Lee	$1015
Wilton Duckworth	$1000

Another former IWP member, who wishes to remain anonymous, has said that there were checks written for each of these alleged payments and that Fran Miller was able to cash these checks at Amalgamated Bank where the campaign and other Newman organizations conduct business. Apparently these checks were endorsed with forged

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signatures and cashed with check cashing cards made out to these fictitious employees also using forged signatures.

3. All cult members were ordered to contribute at least $250 to the campaign. We were specifically asked to pay our IWP dues (at the secret bi-weekly meetings) in contributions to the campaign. We were also asked to make contributions to CLRP and not told why. The contributions from cult members are all on the same days and there is a tremendous amount of kickbacks being given to the CLRP. I ask you to look into this because of the tremendous amount of intimidation used to get cadre (Newman's soldiers) to give money. Newman also gave people cash at times and asked them to contribute it back the campaign as checks or money orders. Newman figures if 300 people give the matchable limit ($250 in a presidential campaign) than his money of $75,000 is doubled to $150,000 fairly easily.

4. So as to be clear to people not familiar with this conspiracy, every person who is in the IWP knows every other member in the organization. IWP members live with other IWP members. IWP members meet periodically. There is a conference every two years in which all the members gather. Lenora Fulani is a member, although as far as I know she had no direct contact with the finances of her campaign. Fulani might not have known how much money was being taken from her campaign, but that is simply because she would have refused to allow herself to know. There is process by which people are told to know only what they "need to know" to follow orders. Because in the minds of conspirators knowing too much is dangerous, if Fulani were told by Newman that she did not "need to know" how her campaign money was being spent--Fulani would simply not allow herself to know and she would ask no questions. So there is no misunderstandings, Rev. Sharpton is not, nor has he ever been, in the IWP. IWP members are communists and Sharpton is a nationalist. Sharpton's objectives are quite different from Newman's. Newman always supported Sharpton and Sharpton never wanted to get involved with IWP. Newman gave Sharpton a lot of money--Sharpton's car was bought by Newman and is registered in Newman's name, Sharpton's house in N.J. was financed by Newman, and Sharpton receives $12,000 a year from Newman although Sharpton does not work for this money. Sharpton has taken Newman's support and has for the most part stayed away from Newman and Fulani.

Newman does not carry a gun, but has guards around him that do, e.g. Jeff Aaron and John Fraire. Fran Miller carries a gun and she is an excellent shot. All of these people do regular weapons training. Jini Berman and Ed Costa supposedly have some of these guns registered in their names. I have never seen any gun registrations and some of the guns cannot be registered.

Since all of this appears to violate federal and state laws I ask that you investigate these matters fully.

Thank you,

Kellie Gasink

Kellie Gasink

Sharon Braunstein

SHARON I. BRAUNSTEIN
Notary Public, State of New York
No. 41-6209908
Qualified in Queens County
Commission Expires January 1, 1995

SHARON I. BRAUNSTEIN
Notary Public, State of New York
Qualified in Queens County
Commission Expires January 1, 1995

SHARON I. BRAUNSTEIN
Notary Public, State of New York
Commission Expires January 1, 1995

9704380 2282

FILENE IN The first customers enter the new Filene's Basement store at Broadway and W. 79th St. to hearty employe applause yesterday. New customers were dedicated enough to wait up to an hour and a half for the doors to open. Of course, New Yorkers had already had to wait a few generations for the store to make its Broadway debut following its long Boston run, longer even than it has been since the Red Sox won a World Series.

Fringe party funds investigated

By WILLIAM KLEINKNECHT
Daily News Staff Writer

The New Alliance Party, the fiery left-wing group that fielded Lenora Fulani in two presidential elections, is facing a criminal probe into its use of millions of dollars in federal campaign funds, the Daily News has learned.

The Manhattan district attorney's office is probing allegations that party founder Fred Newman pocketed some of the $4.4 million — nearly half of it federal matching funds — that was raised for Fulani's 1992 campaign, a source in the office said.

"We are looking into allegations of embezzlement," the source said. "We don't know where it's going to go."

The district attorney's investigators are peering into the shadowy world of a fringe party whose foot soldiers are a fixture in black and Latino neighborhoods but whose internal structure has been a closely guarded secret.

Fulani and her NAP followers have figured behind the scenes in many of the city's most heated political controversies, from Tawana Brawley's rape allegations to the recent occupation of Public School 156 by angry Brooklyn parents.

But several former NAP members who provided information to the district attorney's office say Fulani is just a mouthpiece. Newman, they say, is the real power behind NAP and the one holding the purse strings.

Four of those former associates told The News that Newman cashed checks listed in Federal Election Commission filings as having been paid to campaign workers.

Two of the associates also said that nearly $1 million of the campaign's money was spent on companies that are directly controlled by Newman and did little actual work for the campaign.

"The amount of money that went into these organizations that was actually spent on the campaign was microscopic," said William Pleasant, who until January was a high-ranking NAP member and editor of its newspaper, National Alliance.

Newman, citing his lawyers' advice, would not comment on specific allegations. But he denied money was used improperly and called the charges politically motivated.

"This is not unheard of on the American left," he said. "When people have not gotten what they wanted, they have become every manner of snitch and attacked those they were unable to persuade."

A 38-year-old psychotherapist and former follower of Lyndon LaRouche, Newman founded NAP in 1979 and has built it into a national left-wing party that raises millions of dollars in the name of blacks, Hispanics, gays and other minorities.

His practice of recruiting members through group psychotherapy sessions has prompted widespread denunciation of his party as a cult whose members are blindly obedient.

Critics also have accused the party of anti-Semitism and of exploiting political controversies for publicity.

1st criminal probe

But this is the first time a criminal probe has been publicly linked to NAP. The district attorney's office has jurisdiction in the case because embezzlement of an organization's money, even federal campaign money, violates state law.

The FEC would not comment on whether the agency also is investigating NAP.

FEC documents show $4.4 million was raised for Fulani's 1992 campaign, which put her on the ballot in 40 states. About $2 million was taxpayer dollars that came to the party as federal matching funds. The documents show $845,000 was spent on 11 profit-making businesses linked to NAP, including a publishing concern, an advertising agency, a public relations firm and a law office.

In a five-page letter to the Manhattan district attorney's office that sparked the probe, Kellie Gasink, a former Newman assistant, said most of the NAP-linked businesses that received money "exist only on paper as bank accounts."

For example, Castillo Communications, which received $220,000 for media work, had only three unsalaried employes, she said. The firm's only equipment, she said, were two phones and a fax machine, and their phone bills were paid separately by the campaign.

— With Daily News research assistant James Palcsynski

> **"The amount of money that went into these organizations that was actually spent on the campaign was microscopic."**
> William Pleasant

Mob-class lawyer stays, judge rules

By JERRY CAPECI
Daily News Staff Writer

A federal judge yesterday refused to oust John Gotti's outspoken defense lawyer from the retrial of a reputed Gotti soldier, an effort the judge called a "desperate move" by prosecutors to "eliminate extremely capable counsel."

In a terse, one-page order, Judge Peter Leisure ruled that Bruce Cutler could represent Joseph Gambino at his retrial next week on drug, murder and racketeering charges.

Leisure will issue a full written opinion later, but during oral arguments Tuesday he said he was "not happy" with the motion to disqualify Cutler — calling prosecutors' arguments "strained (and) speculative."

Prosecutors didn't try to oust Cutler from Gambino's first trial — which ended in June with a hung jury — but said this time their move was forced by a recent appeals court ruling that threw out a conviction in a similar case.

Once bitten . . .

But Leisure said the cases weren't similar, and besides, the government burned him before when he bought the prosecution's initial arguments that lawyer Charles Carnesi should not represent Gambino co-defendant Lorenzo Mannino in the first trial.

Prosecutors had sought Carnesi's ouster for U.S. Attorney Otto Obermaier, and it was granted, but later rescinded. Cutler's disqualification was pressed by prosecutors under current Manhattan U.S. Attorney Mary Jo White.

Leisure said the record of the first trial proved that Carnesi's disqualification was unnecessary and that he "was exceptional in his representation. . . . Mannino would have been handicapped if another lawyer had replaced him."

"With Mr. Cutler," said Leisure, "we got a man whose skills are exceptional, and there is every reason for a client to want to have him as his lawyer."

Prosecutor Patrick Fitzgerald said he and prosecutor Richard Zabel "acted the way the law forced us to act, and not for tactical reasons." But Leisure said the motion "reminds me of what I went through with Carnesi."

"It makes me wonder," said Leisure, "whether this isn't a desperate move by the government to try to eliminate an extremely capable counsel because of the situation."

Cutler, whom Brooklyn federal prosecutors successfully prevented from representing Gotti at his racketeering trial, said, "I feel great that I'm going to be allowed to do what I do, which is fight cases for people who need me."

White and Fitzpatrick declined to comment on the ruling.

Shots fired at mourners

LONG BEACH, Calif. (AP) — Six people were hurt, including a pregnant woman, after gunmen opened fire on 200 mourners attending a viewing for two people slain in a drug house attack last week, police said yesterday.

Daily News, Wednesday, November 5, 1993 • DAILY NEWS

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MARCH 7, 1994

Kellie Gasink
3150 Rochambeau Avenue, #41D
Bronx, N.Y. 10467

RE: MUR 3938

Dear Ms. Gasink:

This letter acknowledges receipt on February 28, 1994, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). The respondent(s) will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3938. Please refer to this number in all future communications. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosure
Procedures

9704380284

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MARCH 7, 1994

Lenora B. Fulani
c/o Lenora B. Fulani for President
200 West 72nd Street
New York, N.Y. 10023

RE: MUR 3938

Dear Ms. Fulani:

The Federal Election Commission received a complaint which indicates 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 3938. 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.

9704380285

If you have any questions, please contact Joan McEnery at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

97043802286

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MARCH 7, 1994

Rachel Massad, Treasurer
Lenora B. Fulani for President
200 West 72nd Street
New York, N.Y. 10023

RE: MUR 3938

Dear Ms. Massad:

The Federal Election Commission received a complaint which indicates that Lenora B. Fulani for President ("Committee") and you, as treasurer, 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 3938. 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 the Committee and you, as treasurer, 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.

9704380287

If you have any questions, please contact Joan McEnery at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

97043802288

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MARCH 7, 1994

Francine Miller
c/o Lenora B. Fulani for President
200 West 72nd Street
New York, N.Y. 10023

RE: MUR 3938

Dear Ms. Miller:

The Federal Election Commission received a complaint which indicates 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 3938. 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 Joan McEnery at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary D. Taksar

Mary D. Taksar, Attorney
Central Enforcement Docket

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

9704380229C

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MARCH 7, 1994

Fred Newman
c/o Lenora B. Fulani for President
200 West 72nd Street
New York, N.Y. 10023

RE: MUR 3938

Dear Mr. Newman:

The Federal Election Commission received a complaint which indicates 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 3938. 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 Joan McEnery at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

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OGC 689

ARTHUR BLOCK
ATTORNEY AT LAW
72 Spring Street, Suite 1201, New York, NY 10012 (212) 966-0404

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM
Mar 28 8 58 AM '94

March 24, 1994

BY FACSIMILE AND FCM

Office of General Counsel
Federal Election Commission
Washington, D.C. 20463
Attn: Mary L. Taksar, Esq.

RECEIVED
FEDERAL ELECTION COMMISSION
94 MAR 28 PM 3:11

Re: MUR 3938

Dear Ms. Taksar:

I represent Lenora B. Fulani for President, respondent in the above referenced MUR. I will be forwarding you an executed Designation of Counsel form. The purpose of this letter is simply to inform you of the date that my client received the complaint.

My client received the complaint on March 22, 1994. Although your letter is dated March 7, 1994, it was mailed to the former office address of the Committee, and was forwarded by the U.S. Postal Service on March 18, 1994, and, I am informed, actually received by my client at the Committee's P.O. box on March 22, 1994. (See enclosed copy of envelope.)

Accordingly, the fifteen (15) day period for a response runs until April 6, 1994. From an initial glance at the complaint, I expect that it will be necessary to request an extension of time. However, I will make that request, if necessary, after my client and myself have had an opportunity to review and consider the materials, and have a better idea of the amount of time needed to respond.

Thank you for your attention to this matter.

Very truly yours,

Arthur Block

Arthur R. Block

ARB/bp
cc: Lenora B. Fulani, Ph.D.

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OOC 781

ARTHUR BLOCK
ATTORNEY AT LAW
72 Spring Street, Suite 1201, New York, NY 10012 (212) 966-0404

RECEIVED FEDERAL ELECTION COMMISSION MAIL ROOM
Apr 4 11 48 AM '94

RECEIVED FEDERAL ELECTION COMMISSION OGC
94 APR -4 PM 2:34

March 31, 1994

BY FACSIMILE

Office of General Counsel
Federal Election Commission
Washington, D.C. 20463
Attn: Mary L. Taksar, Esq.

Re: MUR 3938

Dear Ms. Taksar:

On March 24, 1994, I wrote to you in this matter after receiving a complaint addressed to "Francine Miller, c/o Lenora B. Fulani for President." I now enclose a copy of a designation of counsel form signed by Ms. Miller.

Yesterday, March 30, 1994, three additional respondents received complaints in this same MUR. They are named as a) Rachel Massad, Treasurer, Lenora B. Fulani for President; b) Lenora B. Fulani c/o Lenora B. Fulani for President; and c) Fred Newman, c/o Lenora B. Fulani for President. I enclose copies of the envelopes, showing the forwarding labels. Although the FEC transmittal letters all are dated March 7, 1994, the letters were forwarded, and then received at the post office box, at various time intervals.

If the FEC has mailed any other complaint letters in this matter to respondents "c/o Lenora B. Fulani for President," please be advised that as of this date none have been received other than the four above-named.

I represent Massad, Fulani, and Newman. The due date for their responses would be April 15, 1994.

At this point, I am requesting an extension of time to May 15, 1994, to file responses on behalf of all four respondents. This represents a 30 day extension of time with respect to the three complaint letters that were received by my clients yesterday. I will be out of State the first eight days of May, so this will allow me a week to finalize a response after returning from that trip, in consultation with the several respondents.

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ARTHUR BLOCK
ATTORNEY AT LAW

Thank you for your anticipated courtesies and cooperation in this matter.

Very truly yours,

Arthur R. Block

Arthur R. Block

ARB/bp
cc: Lenora B. Fulani, Ph.D.
Francine Miller, Esq.
Rachel Massad
Fred Newman, Ph.D.

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 3938

NAME OF COUNSEL: Arthur R. Block, Esq.

ADDRESS: 72 Spring St., Suite 1201
New York, NY 10012

TELEPHONE: (212) 966-0404 FAX (212) 431-3516

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.

3/31/94
Date

Francine Miller
Signature
Francine Miller, Esq.

RESPONDENT'S NAME: Francine Miller

ADDRESS: 200 W. 60th St., #14F
New York, NY 10023

TELEPHONE: HOME

BUSINESS (212) 969-3742

9704380229 6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 6, 1994

Arthur R. Block, Esq.
72 Spring Street, Suite 1201
New York, NY 10012

RE: MUR 3938
Francine Miller

Dear Mr. Block:

This is in response to your letter dated March 24, 1994, requesting a 30-day extension to respond to the complaint filed in the above-noted matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on May 6, 1994.

If you have any questions, please contact Joan McEnery at (202) 219-3690.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

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OGC 1024

ARTHUR BLOCK
ATTORNEY AT LAW
72 Spring Street, Suite 1201, New York, NY 10012 (212) 966-0404

RECEIVED
FEDERAL ELECTION
COMMISSION
ADMINISTRATIVE DIVISION
Apr 19 9 09 AM '94

April 14, 1994

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Apr 19 10 14 AM '94

BY FACSIMILE AND FCM

Office of General Counsel
Federal Election Commission
Washington, D.C. 20463
Attn: Joan McEnery

Re: MUR 3938

Dear Ms. McEnery:

I enclose Statements of Designation of Counsel from respondents Lenora B. Fulani, Frederick D. Newman, and Rachel Massad, in the above-referenced MUR. As you know, Ms. Miller's Statement has already been submitted to the Commission.

If you need anything further from me in order to process the additional respondents' request for an extension of time, please do not hesitate to contact me. Thank you for your courtesies and cooperation.

Very truly yours,

Arthur R. Block

ARB/bp
encs.
cc: Lenora B. Fulani, Ph.D.
Francine Miller, Esq.
Rachel Massad
Frederick Newman, Ph.D.

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ST EMENT OF DESIGNATION OF COUNSEL

MUR 3938

NAME OF COUNSEL: Arthur R. Block, Esq.

ADDRESS: 72 Spring St., Suite 1201
New York, NY 10012

TELEPHONE: (212) 966-0404 FAX 212-431-3516

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Apr 19 10 14 AM '94

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.

4/6/94
Date

Lenora B Fulani
Signature

RESPONDENT'S NAME: Lenora B. Fulani

ADDRESS: P.O. Box 889
New York, NY 10014-0703

TELEPHONE: HOME( )

BUSINESS(212) 966-0404 (This is attorney's number)

9704380229 9

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3938

NAME OF COUNSEL: Arthur R. Block, Esq.

ADDRESS: 72 Spring St., Suite 1201
New York, NY 10012

TELEPHONE: (212) 966-0404 FAX 212-431-3516

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

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.

4/08/94
Date

X [signature]
Signature

RESPONDENT'S NAME: Fred Newman

ADDRESS: Newman and Braun
500 Greenwich St., Suite 202
New York, NY 10013

TELEPHONE: HOME( )

BUSINESS(212) 941-8844

9704380230C

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3938

NAME OF COUNSEL: Arthur R. Block, Esq.

ADDRESS: 72 Spring St., Suite 1201
New York, NY 10012

TELEPHONE: (212) 966-0404 FAX 212-431-3516

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Apr 19 10 14 AM '94

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.

4/6/94
Date

Rachel Massad
Signature

RESPONDENT'S NAME: Rachel Massad, Treasurer, Lenora B. Fulani for President

ADDRESS: 565 West 169th St. Apt. 3A
New York, NY 10032

TELEPHONE: HOME

BUSINESS( )

9704380230 1

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 20, 1994

Arthur Block, Esq.
72 Spring Street, Suite 1201
New York, NY 10012

RE: MUR 3938
Lenora B. Fulani, Fred Newman
and Lenora B. Fulani for
President and Rachel Massad,
as Treasurer

Dear Mr. Block:

This is in response to your letter dated March 24, 1994, requesting a 30-day extension to respond to the complaint filed in the above-noted matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on May 13, 1994.

As was indicated to you during your telephone conversation with Joan McEnery, the Office of General Counsel must receive an executed Designation of Counsel form in order to provide you with a written confirmation that an extension has been granted. Because we just recently received the Designation of Counsel forms for the above-noted respondents, we were unable to provide confirmation earlier.

If you have any questions, please contact Joan McEnery at (202) 219-3690.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

9704380230 2

OFFICE OF GENERAL COUNSEL

MAY 4 12 02 PM '94

BEFORE THE FEDERAL ELECTION COMMISSION

UNITED STATES OF AMERICA

----------X

KELLIE GASINK,

Complainant,

-against-

MUR 3938

LENORA B. FULANI FOR PRESIDENT, LENORA B. FULANI, Candidate, FRANCINE MILLER, Treasurer, RACHEL MASSAD, Treasurer, FREDERICK NEWMAN,

Respondents.

DESIGNATION OF COUNSEL

----------X

I hereby appoint attorney Richard Mayberry as my Washington Counsel in the above matter.

Dated: New York, NY
May 3, 1994

Lenora B. Fulani
LENORA B. FULANI

Sworn to before me this
3rd day of May, 1994

[illegible]
[illegible]
[illegible]
[illegible]

9704380230 3

[illegible]

May 4 12 02 PM '94

BEFORE THE FEDERAL ELECTION COMMISSION

UNITED STATES OF AMERICA

----------X

KELLIE GASINK,

Complainant,

-against-

MUR 3938

LENORA B. FULANI FOR PRESIDENT, LENORA B. FULANI, Candidate, FRANCIER MILLER, Treasurer, RACHEL MASSAD, Treasurer, FREDERICK EDEMAN,

DESIGNATION OF COUNSEL

Respondents.

----------X

I hereby appoint attorney Richard Mayberry as my Washington Counsel in the above matter.

Dated: New York, NY
May 3, 1994

FREDERICK D. EDEMAN

Sworn to before me this
3rd day of May, 1994

[illegible]
[illegible]
[illegible]
[illegible]

9704380230 4

[illegible]

May 4 12 03 PM '94

BEFORE THE FEDERAL ELECTION COMMISSION

UNITED STATES OF AMERICA

----------X

KELLIE GASINE,

Complainant,

-against-

MUR 3330

LENORA B. FULANI FOR PRESIDENT, LENORA B. FULANI, Candidate, FRANCINE MILLER, Treasurer, RACHEL MASSAD, Treasurer, FREDERICK NEWMAN,

DESIGNATION OF COUNSEL

Respondents.

----------X

I hereby appoint attorney Richard Mayberry as my Washington Counsel in the above matter.

Dated: New York, NY
May 3, 1994

Rachel Massad
RACHEL MASSAD

Sworn to before me this
3rd day of May, 1994

[illegible]
[illegible]
[illegible]
Qualified in New York County
Commission Expires February 24, 1995

97043802305

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

May 6 1 25 PM '94

BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES OF AMERICA

Kellie Gasink,
Complainant

-against-

MUR 3938

Lenora B. Fulani for President, et al.,
Respondents

DESIGNATION OF COUNSEL

I, Francine Miller, hereby appoint Richard Mayberry, Esq. as my Washington, D.C. counsel in the above matter.

Dated: New York, New York
May 4, 1994

Francine Miller
FRANCINE MILLER

Sworn to before me this
4th day of May, 1994

Bruce G. Hart

BRUCE G. HART
Notary Public, State of New York
No. 31-[illegible]01052
Qualified in New York County
Commission Expires August 31, 1994

9704380230 6

BEFORE THE FEDERAL ELECTION COMMISSION

UNITED STATES OF AMERICA

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
MAY 6 2 11 PM '94

KELLIE GASINK,	:	
Complainant,	:	
-against-	:	MUR 3938
LENORA B. FULANI FOR PRESIDENT, LENORA B. FULANI, Candidate, FRANCINE MILLER, Treasurer, RACHEL MASSAD, Treasurer, FREDERICK NEWMAN,	:	AFFIDAVIT OF FRED NEWMAN, PH.D.
Respondents.	:	

State of New York)
) ss.:
County of New York)

FRED NEWMAN, PH.D., being duly sworn, deposes and says:

1. I was Dr. Lenora B. Fulani's Campaign Manager in her 1992 Presidential campaign. I am submitting this affidavit in response to a complaint filed with the Federal Election Commission ("FEC" or the "Commission") against the Lenora B. Fulani for President Committee by Kellie Gasink.

2. Gasink's sworn complaint (which is one paragraph long) does not accuse me of any unlawful conduct, or even mention me. However, the Commission has sent me a notice treating me as a respondent, presumably because I am a subject of her unsworn statement to the Manhattan District Attorney dated June 10, 1993. My attorneys advise me that I am not required to respond to the allegations in the unsworn statement.

3. However, that is not in any sense to be taken as an admission of any wrongdoing. As my attorney sets forth in the

9704380230 7

legal argumentation submitted herewith, and in a motion to be submitted by Washington D.C. counsel, to respond to Gasink's unsworn statement would be to give up the protections provided by § 437g.

4. My role as Dr. Fulani's campaign manager was to give political and tactical recommendations and advise the candidate on how to shape her campaign message. I frequently travelled with the campaign and advised Dr. Fulani on an almost full time basis throughout.

5. For over a year now, complainant Gasink has been assisting William Pleasant, a former political colleague of mine, in harassing me and people who work with me. The accompanying affidavit of Dr. Daniel Friedman documents six harassing phone calls that were placed to me from Gasink's home telephone. Five of them, according to Dr. Friedman, were made by William Pleasant. Pleasant has written a series of letters to Dr. Fulani urging her to stop working with me. (Copies are attached to Dr. Fulani's affidavit.) Pleasant has written a series of vituperative letters to me, copies of which I have annexed as Exhibit A. Apparently, Gasink and Pleasant collaborated in making the June 10, 1993 complaint to the Manhattan District Attorney, and then having the DA's investigation leaked to the Daily News to produce an article that features Gasink and Pleasant as its sources.

6. Just today, Dr. Friedman handed me a copy of another letter he received from Pleasant which is annexed as Exhibit B. The letter contains the following P. S.:

9704380230 8

Firstly, as you see, this letter really isn't to you, but to FN. 2nd-person format simply gives me a polemical freedom. I have no personal or political animus toward you.

7. I urge the Commission to reject this politically and personally motivated complaint. To do otherwise would allow the Commission to be used by Gasink and Pleasant in carrying out their vendetta.

FRED NEWMAN, PH.D.

Sworn to Before me this
5th day of May, 1994

HARRY KRESKY
Notary Public, State of New York
No. 31-7366215
Qualified in New York County
Commission Expires February 23, 199

9704380230 9

2129fn.afa

Exhibit A

LENORA B. FULANI FOR PRESIDENT
250 WEST 57TH STREET, SUITE 317
NEW YORK, NY 10019

2439

11/29 1991

1-337/250

PAY TO THE ORDER OF Killie Oasink $ 225.00

Two hundred twenty five + 00/xx DOLLARS

91 NOV 29 P 3:14

AMALGAMATED BANK OF NEW YORK
1710 Broadway, New York, N.Y. 10019

02 005202590

FOR

Francine Ali

⑈002439⑈ ⑆026003379⑆ 31031541⑈ ⑈0000022500⑈

9704380231C

ENDORSE HERE

X Killie Oasink

Francine Ali

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE

29 NOV 91

▶ 026003379 ◀
AMALGAMATED
BANK OF NY
NEW YORK, NY
▶ 026003379 ◀

005202590 02 30659

Exhibit B

LENORA B. FULANI FOR PRESIDENT
250 WEST 57TH STREET, SUITE 317
NEW YORK, NY 10019

AMALGAMATED BANK OF NEW YORK
1710 BROADWAY
NEW YORK, NY 10019

05444

1-337/260

EMPLOYEE NO. 506

CHECK NO. 005444

TWO HUNDRED TWENTY FIVE DOLLARS AND 00/CENTS

DATE 11/15/91

AMOUNT $$$$225.00

PAY TO THE ORDER OF KELLIE GASINK

01 006001053

AUTHORIZED SIGNATURE

⑈005444⑈ ⑆026003379⑆ 31031541⑈ ⑈0000022500⑈

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Kellie Gasink

DO NOT SIGN, STAMP OR WRITE BELOW THIS LINE
AREA RESERVED FOR FINANCIAL INSTITUTIONS

15 NOV 91

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AMALGAMATED
BANK OF N
NEW YORK

006001093 01 31116041

BEFORE THE FEDERAL ELECTION COMMISSION

UNITED STATES OF AMERICA

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Mar 6 2 11 PM '96

KELLIE GASINK, Complainant,	:	
-against-	:	MUR 3938
LENORA B. FULANI FOR PRESIDENT, LENORA B. FULANI, Candidate, FRANCINE MILLER, Treasurer, RACHEL MASSAD, Treasurer, FREDERICK NEWMAN, Respondents.	:	AFFIDAVIT OF LENORA FULANI, PH.D.

State of New York)
) ss.:
County of New York)

LENORA B. FULANI, PH.D., being duly sworn, deposes and says:

1. I was a candidate for President of the United States in the 1992 election, and one of the 11 candidates who qualified for federal primary matching funds. I am submitting this affidavit in response to a complaint filed with the Federal Election Commission ("FEC" or the "Commission") against my campaign committee[1] by Kellie Gasink. This complaint is baseless.

---

[1] The complaint does not allege that I, personally, violated any laws. However, the FEC has sent me a separate notice of the complaint, which I understand to mean that the Commission has decided to treat me as a respondent. In any event, I submit this affidavit not only on my own behalf, but on behalf of my campaign committee, Lenora B. Fulani for President (the "Committee"); my two treasurers, Francine Miller and Rachel Massad; and my campaign manager, Dr. Fred Newman.

9704380231 2

2. Gasink's unsworn statement of June 10, 1993 to the Manhattan District Attorney (which was apparently submitted with her one paragraph sworn complaint) spins an elaborate and at times fantastical story of a conspiracy to use my 1992 presidential campaign to embezzle funds and put them into the hands of Dr. Fred Newman.[2] This is a story which has been peddled to various media outlets and law enforcement agencies by Gasink and her intimate friend William Pleasant, ever since Pleasant, a writer of fiction and of political polemics and a longtime supporter of my political work, stopped working with me and turned his disagreements with the activities of myself and Dr. Newman into a full scale vendetta.

3. My attorneys advise me that I am not required to respond to the allegations in Gasink's unsworn statement of June 10, 1993.

---

[2] Gasink's sworn complaint dated January 31, 1994, consists of one paragraph. She makes only one charge that is not based on hearsay -- she says, "I was listed on her campaign records as receiving $500 that I never received, nor knew anything about." The one paragraph complaint encloses an unsworn "statement to the Manhattan District Attorney's Office," which is five pages long, and a news clipping from the Daily News.

Gasink first attempted to submit the complaint unsworn. The Commission sent it back to her with instructions that she would have to make her charges under penalties of perjury. (See Exhibit A annexed). She resubmitted the one paragraph complaint letter with an added verification. However, she chose not to swear to the truth of her allegations set forth in the statement to the Manhattan District Attorney, even after receiving the Commission's detailed instructions about the procedure for verifying a complaint. The statement to the Manhattan District Attorney, which is dated June 10, 1993, 6 months prior to the complaint, merely bears a gratuitous notary stamp on it, with neither a verification nor a date. I assume that the complainant, who, I am informed, was an employee of the Bronx District Attorney's Office, and a law student, at the time of filing her complaint, knew the difference between sworn and unsworn statements.

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4. However, that is not in any sense to be taken as an admission of any wrongdoing. As my attorney sets forth in the legal argumentation submitted herewith, and in a motion to be submitted by Washington D.C. counsel, to respond to Gasink's unsworn statement would be to give up the protections provided by § 437g.

5. The ongoing character of the Pleasant-Gasink vendetta is reflected in the Daily News article enclosed with the complaint, which identifies as its sources William Pleasant and Kellie Gasink, and in a series of harassing telephone calls and letters.

6. This past February and March, six harassing calls were made to Dr. Newman from Gasink's home telephone. On five of the calls, Pleasant was the caller. See accompanying Affidavit of Dan Friedman sworn to May 4, 1994.

7. I enclose copies of letters Pleasant has written to me in which he insists that I have made incorrect political decisions. He accuses me of allowing myself to be manipulated and exploited by Dr. Newman, demands that I end my association with Dr. Newman and patronizingly counsels me not to turn to drugs or alcohol for solace. See Exhibit B annexed. Dr. Newman's affidavit attaches copies of some of the hate-filled letters that Pleasant has sent to him.

8. On page 5 of her unsworn statement, Gasink presumes to know how I run (or, in her view, how I don't run) my presidential campaigns, as well as the inner workings of my mind.

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9. Gasink's attempted reading of my mind is a figment of her imagination. I take responsibility for how my campaigns are run. I seek advice from experts, colleagues, staff and legal counsel; I delegate work to my staff to free myself up to campaign around the country. But I run grass roots campaigns with scarce resources. So I must ultimately determine priorities, actively participate in fundraising activities, set policy about how to allocate scarce resources.

10. For example, at the conclusion of an ongoing dialogue with my campaign manager, Dr. Newman, and other key advisors, I decided a priority of the 1992 campaign would be to intensify the fight for eliminating inequities in the election process. I invested a great deal of resources in my New Hampshire primary campaign, which was very successful in making the exclusionary practices of the Democratic Party and the League of Women Voters Education Fund a national issue early in the campaign. I could have used that money to pay a petitioning company to get me on the ballot in California (which would have significantly increased my votes in November), or for many other vote-enhancing activities. But these are the kinds of decisions I make, given the long term goals of the New Alliance Party ("NAP"), of which I am the chairperson.

11. In putting together a campaign organization, I hired the best individuals and companies that were available to me.

9704380231 5

12. I hired Dr. Newman as campaign manager because he is an expert at developing the strategy, tactics, and message of an independent presidential campaign such as mine. He has proven his skills to me time and again.

13. I chose Gary Sinawski as my ballot access counsel because he is probably the foremost expert in the field, and a hard working, reliable and trusted counsel through many campaigns. When Ross Perot was exploring the idea of running for President, one of his confidential advisors came to New York and met with Mr. Sinawski to find out how he led my successful 1988 50 state ballot access drive.

14. Arthur Block is probably the nation's top legal expert on the issue of inclusion in presidential candidate debates. He has not only litigated precedent-setting issues on my behalf, but also represented insurgent Democrats Larry Agran and Eugene McCarthy in fights about ballot access in Buffalo, New York, (Agran only) and the Bronx. His written and oral testimony on the subject was sought by the House Subcommittee on Elections.

15. Castillo Communications has been my public relations firm before, during and after the 1992 campaign. It has unique skills in interesting the media in my activities. It has issued countless press releases, booked me for hundreds of radio shows and speaking engagements, and regularly secured invitations for me to appear on national news and interview programs such as the McNeil Lehrer Hour, Crier and Company (now

9704380231 6

CNN and Company), Good Morning America, CSPAN's The Road to the White House, Sonia Live, and Donahue.

Cult-Baiting

16. Gasink's unsworn statement of June 10, 1993 claims that my campaign was run by a cult.

17. Defaming the NAP as a "cult" has long been a favorite tactic of partisan opponents of NAP, particularly leftists and liberals. While opponents from the center and right of the political spectrum can criticize NAP for its actual politics -- pro-socialist, pro-gay, multi-racial, etc. -- its competitors on the left have had to come up with a "nonpolitical" attack mode. "Cult" fills that need, particularly after the intensified demonization of "cults" that was accomplished through the government's justification of its extermination of the Branch Davidians.

18. For years, Bill Pleasant was a tenacious polemicist and defender of NAP, Newman and me against our political detractors. Now that Pleasant and Gasink have broken with NAP, they apparently hope to gain some credibility on the left by joining in its chorus of cult-baiting.

19. In addition, by charging that NAP is run by a "cult," the complainant and others like her attempt to undermine both NAP, and my position as the leader of NAP.

20. I certainly hope that the Commission will not allow defamatory cult-baiting to prejudice its review of this case and distort its critical analysis of the charges and the

9704380231 7

evidence. The constitutional rights of myself and my supporters would be jeopardized were it to allow this.

21. I believe that if the Commission disregards, as it must, the prejudicial and provocative content of the unsworn statement dated June 10, 1993, and fairly considers this matter, it will properly find that the Gasink complaint presents no credible evidence that my Committee violated any federal election laws.

Lenora B. Fulani

LENORA B. FULANI

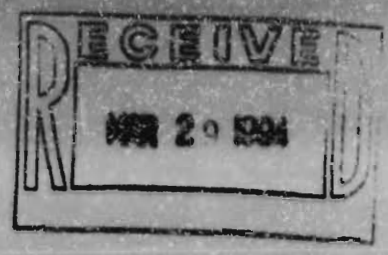
Sworn to before me this
6th day of May, 1994

HARRY KRESKY
Notary Public, State of New York
No. 31-7366215
Qualified in New York County
Commission Expires February 28, 199_

9704380231 8

Exhibit A

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463



February 8, 1994

Kellie Gasink
3150 Rochambeau Avenue, #41D
Bronx, NY 10467

Dear Ms. Gasink:

This is to acknowledge receipt on February 7, 1994, of your letter dated January 31, 1994. The Federal Election Campaign Act of 1971, as amended ("the Act") and Commission Regulations require that the contents of a complaint meet certain specific requirements. One of these requirements is that a complaint be sworn to and signed in the presence of a notary public and notarized. Your letter was not properly sworn to.

In order to file a legally sufficient complaint, you must swear before a notary that the contents of your complaint are true to the best of your knowledge and the notary must represent as part of the jurat that such swearing occurred. The preferred form is "Subscribed and sworn to before me on this _____ day of _____, 19__." A statement by the notary that the complaint was sworn to and subscribed before her also will be sufficient. We regret the inconvenience that these requirements may cause you, but we are not statutorily empowered to proceed with the handling of a compliance action unless all the statutory requirements are fulfilled. See 2 U.S.C. § 437g.

Enclosed is a Commission brochure entitled "Filing a Complaint." I hope this material will be helpful to you should you wish to file a legally sufficient complaint with the Commission.

If you have any questions concerning this matter, please contact me at (202) 219-3410.

Sincerely,

Retha Dixon

Retha Dixon
Docket Chief

Enclosure

cc: Lenora B. Fulani for President

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BEFORE THE FEDERAL ELECTION COMMISSION
UNITED STATES OF AMERICA

----------X

KELLIE GASINK,

Complainant,

-against-

LENORA B. FULANI FOR PRESIDENT, et. al.,

Respondents.

----------X

MUR 3938

AFFIDAVIT

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

MAY 6 2 11 PM '94

STATE OF NEW YORK)
ss:
COUNTY OF NEW YORK)

DORIS KELLY, being duly sworn, deposes and says:

1. I am 53 years of age and reside at 1370 St. Nicholas Avenue, New York, NY.

2. I am a registered nurse and presently work as the HIV care coordinator at an alcohol treatment facility in East Harlem.

3. During the summer of 1992 I performed clerical services for the Lenora B. Fulani for President Committee.

4. I was paid $1475 for this work by checks drawn on the Committee's account at the Amalgamated Bank.

5. Copies of the front and back of these checks are annexed hereto as Exhibit A. There are five checks in all. Each one was endorsed by me and deposited in my account at Citibank.

Doris R Kelly
DORIS KELLY

Sworn to before me this
5th day of May, 1994

DAVID BELMONT
Notary Public, State of New York
No. 31-4717038
Qualified in New York County
Commission Expires June 30, 19[illegible]

9704380232C

Exhibit A

LENORA B. FULANI FOR PRESIDENT
250 WEST 57TH STREET, SUITE 312
NEW YORK, NY 10019

AMALGAMATED BANK OF NEW YORK
1710 Broadway, New York, N.Y. 10019

08251

1-337/260

EMPLOYEE NO.	CHECK NO.
624	008251

(TWO HUNDRED FIFTY DOLLARS AND 00/CENTS)

DATE	AMOUNT
07/31/92	****250.00

PAY TO THE ORDER OF DORIS KELLY

Francine [signature]
AUTHORIZED SIGNATURE

01-001601779

⑈008251⑈ ⑆026003379⑆ 31031541⑈ ⑈0000025000⑈

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CITIBANK, N.A. 0512
BRO906 61218166
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MAN IPS (93)
CITIBANK, NA
111 WALL ST, NYC
(212) 620-1217
MAN IPS (93)
021000089

PAID-AMALGAMATED
BANK OF NY
001601779 08-05-92 01

ENDORSEMENTS HERE

DO NOT SIGN, STAMP OR WRITE BELOW THIS LINE
AREA RESERVED FOR FINANCIAL INSTITUTIONS

LENORA B. FULANI FOR PRESIDENT
250 WEST 57TH STREET, SUITE 317
NEW YORK, NY 10019

AMALGAMATED BANK OF NEW YORK
1710 Broadway, New York, N.Y. 10019

08356

1-337/200

EMPLOYEE NO. 624

CHECK NO. 008356

(TWO HUNDRED FIFTY DOLLARS AND 00/CENTS)

DATE 08/07/92

AMOUNT ****250.00

PAY TO THE ORDER OF DORIS KELLY

Francine [illegible]

AUTHORIZED SIGNATURE

02-000701950

⑈008356⑈ ⑆026003379⑆ 31031541⑈ ⑈0000025000⑈

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ENDORSEMENTS HERE

Pam R. Kelly
613 18 [illegible]

DO NOT SIGN, STAMP OR WRITE BELOW THIS LINE
AREA RESERVED FOR FINANCIAL INSTITUTIONS

CITIBANK, N.A. 8612
[illegible]
02421352 08-12-92

MAN IPS (26)
CITIBANK, NA
111 WALL ST, NYC
(212) 620-1217

AUG 9 1992

PAID-AMALGAMATED
BANK OF NY
000701950 08-13-92 02N

MAN IPS (26)
021000089

LENORA'S. FULANI FOR PRESIDENT
200 WEST 57TH STREET, SUITE 317
NEW YORK, NY 10019

AMALGAMATED BANK OF NEW YORK
1710 Broadway, New York, N.Y. 10019

08430

1-337/260

EMPLOYEE NO. 624

CHECK NO. 008430

(TWO HUNDRED FIFTY DOLLARS AND 00/CENTS)

DATE 08/14/92

AMOUNT ****250.00

PAY TO THE ORDER OF DORIS KELLY

Francine Ch

AUTHORIZED SIGNATURE

⑈008430⑈ ⑆026003379⑆ 31031541⑈ ⑈0000025000⑈

9704380233

CITIBANK, N.A. 0612
BR0036 61318106
02701962 08-17-92

MAN IPS (16)
CITIBANK, NA
111 WALL ST, NYC
(212) 623-1217

MAN IPS (16)

AUG 92

03050618

BANK OF NY
001300577 08-18-92

SUBDEPARTMENTS HERE

DO NOT SIGN, STAMP OR WRITE BELOW THIS LINE
AREA RESERVED FOR FINANCIAL INSTITUTIONS

LENORA B. FULANI FOR PRESIDENT
250 WEST 57TH STREET, SUITE 317
NEW YORK, NY 10019

AMALGAMATED BANK OF NEW YORK
1710 Broadway, New York, N.Y. 10019

08497

1-337/260

EMPLOYEE NO. 624

CHECK NO. 008497

(THREE HUNDRED DOLLARS AND 00/CENTS)

DATE 08/21/92

AMOUNT ****300.00

PAY TO THE ORDER OF DORIS KELLY

Francine Ch

AUTHORIZED SIGNATURE

⑈008497⑈ ⑆026003379⑆ 31031541⑈ ⑇0000030000⑇

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CITIBANK, N.A. 8612
BROOKLYN, NY 11208
02832284 08-25-92

MAN IPS (61)
CITIBANK, NA
111 WALL ST, NYC
(212) 669-1217

MAN IPS (61)

PAID - AMALGAMATED
BANK OF NY
000402226 08-25-92

ENDORSEMENTS HERE

Dan R. Kelly
C13184F6

DO NOT SIGN, STAMP OR WRITE BELOW THIS LINE
(AREA RESERVED FOR FINANCIAL INSTITUTIONS)

LENORA B. FULANI FOR PRESIDENT
250 WEST 57TH STREET, SUITE 317
NEW YORK, NY 10019

AMALGAMATED BANK OF NEW YORK
1710 Broadway, New York, N.Y. 10019

1-337/260

EMPLOYEE NO. 624

CHE 00649

(THREE HUNDRED DOLLARS AND 00/CENTS)

DATE 08/21/92

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PAY TO THE ORDER OF DORIS KELLY

Francia

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⑈008497⑈ ⑆026003379⑆ 31031541⑈ ⑇00

9704380232

THREE HUNDRED DOLLARS AND 00/CENTS

CITIBANK, N.A. 8612
BROOKLYN, NY 10019

MAN. IPS (61)

CITIBANK, NA

AREA RESERVED FOR FINA

LENORA B. FULANI FOR PRESIDENT
250 WEST 57TH STREET, SUITE 317
NEW YORK, NY 10019

AMALGAMATED BANK OF NEW YORK
1710 Broadway, New York, N.Y. 10019

08564

1-337/260

EMPLOYEE NO. 624

CHECK NO. 008564

(FOUR HUNDRED TWENTY FIVE DOLLARS AND 00/CENTS)

DATE 08/28/92

AMOUNT ****425.00

PAY TO THE ORDER OF DORIS KELLY

Francine [signature]

02141977 B1316186 AUTHORIZED SIGNATURE

⑈008564⑈ ⑆026003379⑆ 31031541⑈ ⑇0000042500⑇

9704380232

ENDORSEMENTS HERE

DO NOT SIGN, STAMP OR WRITE BELOW THIS LINE
AREA RESERVED FOR FINANCIAL INSTITUTIONS

CITIBANK, N.A. BE12
BR0906 B1316186
02141977 09-04-92

MAN-IPS (32)

MAN IPS (32)

Francine [signature]

BEFORE THE FEDERAL ELECTION COMMISSION

UNITED STATES OF AMERICA

----------X

KELLIE GASINK,

Complainant,

-against-

LENORA B. FULANI FOR PRESIDENT, LENORA B. FULANI, Candidate, FRANCINE MILLER, Treasurer, RACHEL MASSAD, Treasurer, FREDERICK NEWMAN,

Respondents.

----------X

MUR 3938

AFFIDAVIT

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
MAY 6 2 11 PM '94

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STATE OF NEW YORK)
ss:
COUNTY OF NEW YORK)

RACHEL MASSAD, being duly sworn, deposes and says:

1. I served as treasurer of Dr. Lenora B. Fulani's 1992 general election campaign, and assisted Francine Miller in her work as treasurer of the Lenora B. Fulani for President Committee.

2. As my name is not mentioned in any of the statements, sworn and unsworn, submitted by complainant Gasink. I am not sure why I am named as a respondent.

3. In any event, I ask the Commission to consider the affidavits and other papers submitted on behalf of the other respondents as submitted on my behalf as well.

Rachel Massad
RACHEL MASSAD

Sworn to before me this
4 day of May, 1994

[illegible]

BEFORE THE FEDERAL ELECTION COMMISSION

UNITED STATES OF AMERICA

----------X

KELLIE GASINK,

Complainant,

-against-

LENORA B. FULANI FOR PRESIDENT, LENORA B. FULANI, Candidate, FRANCINE MILLER, Treasurer, RACHEL MASSAD, Treasurer, FREDERICK NEWMAN,

Respondents.

----------X

MUR 3938

AFFIDAVIT

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
MAY 6 2 11 PM '94

9704380232 7

STATE OF NEW YORK)
ss:
COUNTY OF NEW YORK)

WILTON DUCKWORTH, being duly sworn, deposes and says:

1. I am 43 years old and reside at 1257 Park Avenue, New York, NY.

2. I practice architectural design as my profession. I am also proficient in carpentry and to some extent in telephone technology.

3. During the year 1992 I performed extensive services for the Lenora B. Fulani for President Committee including installing a telemarketing system and making various repairs at the Committee's offices at 200 West 72 St., New York, NY.

4. I did this work because of an ideological commitment I shared with others who worked for the Committee, including its treasurer, Francine Miller.

5. While I cannot recall the exact amount, I know I was paid something for these services, although the amount I was paid

was far less than what my services were worth.

6. I believe I was paid less than $1,000 in all.

7. I have examined a check for $575 dated March 20, 1992 from the Committee payable to me.

8. A copy of the front and back of the check is annexed hereto as Exhibit A.

9. That is not my signature on the back of the check.

10. If Francine Miller or one of her assistants, acting at her direction, signed my name and cashed the check, that would have been completely consistent with our shared ideological commitment.

WILTON DUCKWORTH

Sworn to before me this
4th day of May, 1994

HARRY KRESKY
Notary Public, State of New York
No. 31-7366219
Qualified in New York County
Commission Expires February 28, 199[illegible]

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Exhibit A

LENORA B. FULANI FOR PRESIDENT
200 WEST 72ND STREET, SUITE 30
NEW YORK, NY 10023

4137

1-337/260

3/20 19 92

PAY TO THE ORDER OF Wilton Duckworth $ 575.00

Five hundred seventy five + 00/xx DOLLARS

AMALGAMATED BANK OF NEW YORK
1710 Broadway New York, N.Y. 10019

01 005102431

FOR Carpentry Svcs

⑈004137⑈ ⑆026003379⑆ 31031541⑈ ⑈0000057500⑈

9704380232 9

20 MAR 92

44
11-15 [illegible]
212-255-[illegible]
AMALGAMATED
BANK OF NY
NEW YORK, NY
026003379

4483168

005102431 01 31110042

ENDORSE HERE
x Wilton Duckworth

BEFORE THE FEDERAL ELECTION COMMISSION

UNITED STATES OF AMERICA

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
MAY 6 2 11 PM '97

KELLIE GASINK, Complainant,	:	
-against-	:	MUR 3938
LENORA B. FULANI FOR PRESIDENT, LENORA B. FULANI, Candidate, FRANCINE MILLER, Treasurer, RACHEL MASSAD, Treasurer, FREDERICK NEWMAN, Respondents.	:	AFFIDAVIT OF DANIEL FRIEDMAN, PH. D.

State of New York)
) ss.:
County of New York)

DANIEL FRIEDMAN, PH.D., being duly sworn, deposes and says:

1. I am over 18 years of age and a resident of New York, New York. My doctorate degree is in the field of Theater History, and was awarded to me in 1979 by the University of Wisconsin.

2. I have personal knowledge of the facts described herein.

3. I am submitting this affidavit and the annexed exhibits to provide the Commission with evidence that six harassing phone calls were placed from the complainant's home telephone to respondent Dr. Fred Newman. Five of the calls were made by William Pleasant, and the sixth by an unidentified male.

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4. First, I will explain how I came to learn about these telephone calls. Then I will set forth the content of them.

5. This past February and March, four pilot episodes of a cable television program, "Therapy for America with Dr. Fred Newman," ("TFA") were cablecast on public access channels.

6. TFA is a simulated social therapy group led by Dr. Newman, in which the "patients" are actors. (Social therapy is an approach to psychotherapy and education that Dr. Newman created in collaboration with developmental psychologists and mental health professionals.)

7. During the show, viewers are invited to use an 800 number posted on the screen to call Dr. Newman and leave him messages about what issues they would like to have dealt with in an upcoming episode.

8. I was responsible for retrieving the messages for Dr. Newman from the telephone company's message center and transcribing them.

9. The bill from the telephone company identifies the numbers from which calls are placed, and the time and duration of the calls. Annexed hereto as Exhibit A is a copy of two bills covering the call-ins from the three pilot programs in the New York City area.

10. I am informed that on her complaint to the Commission, Kellie Gasink has listed her home telephone number as (718) 515-8791. As you will see, six harassing calls were placed

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to Dr. Newman from her home telephone. Two were placed on February 19, 1994, two on February 26, 1994, and another two on March 5, 1994.

11. I listened to the messages recorded from the calls from Gasink's home telephone.

12. I am very familiar with the sound of the voice of William Pleasant and the manner of his speaking. We worked closely together for several years on a number of projects. For example, we worked together on the editorial staff of the National Alliance, as well as on other publications, and we were both active members of the Castillo Cultural Center, with particular involvement in the center's theatre productions.

13. Pleasant left the following voice message for Dr. Newman at 7:10 p.m. on February 19, 1994:

> Yeah, like, you know, I really identify with the therapist, Fred Newman 'cause he's out of his fucking mind and he's a crook and he's a fucking thief. And I just want you to know that I find it amazing that you would drop the Fulani show and put on some more of Fred Newman's bullshit. He's a idiot. Why don't you people face it? He's a fool. Wake up. I going to keep calling. Okay? Good bye. [hysterical laugh]

14. Pleasant left the following voice message for Dr. Newman at 7:13 p.m. on February 19, 1994:

> Yeah, I need some therapy real bad because Fred Newman ripped me off and stole money. I need therapy, help me, oh God!

15. Pleasant left the following voice message for Dr. Newman at 11:45 p.m. on February 26, 1994:

> Yeah, I don't identify with any of the patients. I identify with Fred Newman, the therapist, because I feel like really

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paranoid. I feel like somebody's watching me, like I'm being investigated. I need some help.

16. Pleasant left the following voice message for Dr. Newman at 11:56 p.m. on February 26, 1994:

> Yeah, I got a problem, I got a problem with this fat guy named Fred Newman talking with his hands. I wish he wouldn't talk with his hands. Okay? Thanks. [Fake sobbing]

17. Pleasant left the following voice message for Dr. Newman at 9:03 p.m. on March 5, 1994:

> Yeah, my name is Raheed and I got these three bitches living in my house and I need some help from Fred Newman 'cause I know he's got three bitches living in his house. How you handle them bitches? Do you just slap them around and shit? I need to know. I need some help. Please. Thank you.

18. Thirteen (13) minutes after Pleasant left the foregoing message, there was another call from Gasink's phone. The caller, whose voice I did not recognize, left this message for Dr. Newman:

> I identify mostly with Fred. I'm a big man too. I feel very very guilty. You see I been -- it's hard for me to talk about this -- I've been embezzling money. I've been forging checks and cashing them, even checks from dead people. I made up a bunch of phoney paper companies and laundered millions of dollars into secret bank accounts. I'm a lying, thieving punk. And I'm really paranoid 'cause I have this feeling that I'm about to get indicted. What should I do Fred? Maybe you have some insight.

Daniel Friedman
DANIEL FRIEDMAN, PH.D.

Sworn to Before Me
This 4th day of May, 1994

Notary Public

2129df.afm

MARY KRESTY
Notary Public, State of New York
No. 31-7341213
Qualified in New York County
Commission Expires February 28, 199_

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OGC 1227

UNITED STATES OF AMERICAN
BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
MAY 6 1 15 PM '94

.....
In re :
:
Matter Under Review 3938:
.....

MOTION FOR RESUBMISSION OF JUNE 10,1993 COMPLAINT TO COMPLAINANT FOR VERIFICATION, OR IN THE ALTERNATIVE FOR NOTIFICATION TO COMPLAINANT THAT NO FURTHER ACTION WILL TAKEN ON THE BASIS OF THAT COMPLAINT

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Respondents, by counsel, move the Federal Election Commission ("FEC" or "Commission") to consider the legal adequacy of the documents filed by Kellie Gasink, private complainant, in this matter. This motion is filed on behalf of Lenora B. Fulani, presidential candidate, the Fulani For President Committee ("Committee"), Francine Miller and Rachel Massad, the Committee's Treasurers, and Frederick Newman, campaign manager. A designation of counsel for the Committee's Treasurer, Francine Miller, is appended. The other designations were previously filed with the Commission.

At the onset, Respondents note the extraordinary nature of this pleading and that the pleading procedure is not expressly provided for in the Commission's regulations. However for the relief requested to be meaningful, the issue raised in this pleading must be adjudicated prior to the reason to believe determination. Otherwise the respondents are left with the Hobson's choice of responding to massive broadbrush and unverified allegations or risking a possible adverse inference for its failure to respond when the Commission makes a reason to believe determination . In any event the Commissioners have the power sua sponte to review the processing of complaints.

Based upon conversations with the OGC, it appears further dialogue among counsel would be fruitless. In such a situation consideration of an administrative pleading short of a response is appropriate when balancing the real and discernible harm suffered by Respondents with other administrative consideration factors. The basis for respondents' jeopardy is set forth below.

BACKGROUND

The factual crux of the issue presented is whether the Commission has notified the Respondents pursuant to 11 CFR 111.5(a) of one verified complaint or two complaints - one verified *and one unverified*. If it is the latter case, as appears evident from a black letter reading of FECA and the Commission's own regulations, then the inial complaint processing must be commenced a third time with the unverified complaint being returned to the complainant for verification or withdrawal. Otherwise the entire process ab initio and looking forward is procedurally tainted.

Complainant filed three documents on two occasions with the Commission: The first is a one paragraph letter dated January 31, 1994 containing one specific allegation that Ms. Gasink believes that she didn't receive money listed in the Committee's FEC records as having been paid to her. The Committee and the Treasurer reply to this spurious charge in their reason to believe response being filed concurrently with this motion. This complaint was initially submitted without verification, and submitted a second time verified. Without attempted merger with the second letter dated June 10, 1993 to the Manhattan District Attorney it would appear to meet the requirements of 11 CFR 111.4.

Complainant in a barrage of unsubstantiated charges contained within the June 10, 1993 letter covering five pages single spaced alleges civil and criminal wrongdoing by persons not mentioned in the verified one paragraph complaint. The last page of this letter ends "...I ask that you investigate these matters fully." The June 31, 1993 letter was returned to complainant in its unverified condition, and filed a second time by Ms. Gasink without verification.

THE CHARACTER OF THE JUNE 10,1993 LETTER CLEARLY SHOWS IT TO BE A SECOND COMPLAINT

A plain reading of the letter and the call for an investigation clearly demonstrates that it constitutes a second complaint. Moreover, it contains numerous civil and criminal charges not within the first complaint. The only concrete allegation in the January 31, 1994 complaint is that Ms. Gasink "was listed on (the Committee's) campaign records as receiving $500 that (she) never received, nor knows anything about." This is an alleged reporting violation by the Committee, and perhaps the Treasurer.

The June 10, 1993 complaint, on the other hand, is wholly targeted at the campaign manager (who is not named in the January 31, 1994 complaint), and lays out a web of purported intrigue

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involving alleged embezzlement by "payments to Newman organizations, payments to organizations & companies not controlled by Newman, and payments to individuals." page 2 (unnumbered in text). The next three pages of the second letter are devoted to an attempt to describe the embezzlement. One is at a loss on how to characterize this without calling it a complaint, and a second complaint which is not verified at that.

THE COMMISSION IS WITHOUT
AUTHORITY TO ACT ON AN UNVERIFIED COMPLAINT

Section 437g(a)(1) states in pertinent part that a private "complaint shall be in writing, signed and *sworn to by the person filing such complaint*, shall be notarized, and *shall be made under penalty of perjury and subject to the provisions of section 1001 of title 18*, United States Code." 2 USC 437(a)(1)(emphasis added). The Commission's own regulations provide that no action shall taken on the basis of an unverified complaint. See 11 CFR 111.5. On this basis it would be a misuse of the 437g complaint process to permit Ms. Gasink to manipulate the system by triggering a federal investigation on the basis of unverified allegations in the June 10, 1993 complaint against persons not named in the verified complaint.

Such a practice raises serious civil liberty and constitutional questions. To permit complainant to then endrun her problems with an unverified complaint by asserting third party hearsay from a newspaper article (the third document she submitted) in order to provide a springboard for charges that the complainant has no first hand knowledge of is equally troubling. Moreover it frustrates Congressional intent underpinning Section 437g, and permits allocation of scarce Commission resources on allegations which are of dubious value since the complaintant is not willing to verify them. Ms. Gasink should not be allowed to subterfuge the 437g complaint process. This is unfair to respondents.

Ironically, this is unfair to Ms. Gasink as well. Fairness dictates that Ms. Gasink be provided the opportunity to either withdraw or verify the June 10, 1993 charges. If the Commission were to address the allegations contained therein, it could be construed as incorporation by reference of the June 10, 1993 letter into the January 31, 1994 letter, something Kellie Gasink did not do. Arguably this would subject Ms. Gasink de jure to the penalty of perjury contained in Title 18 of the United States Code for the Commission only has jurisdiction as to verified complaints. See 2 USC 437g(a)(1).

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CONCLUSION

For these reasons, all respondents respectfully request that the Commission intervene at this point in the reason to believe process. Fairness to the respondents and to complainant dictates resubmission of the June 10, 1993 complaint to Ms. Gasink for verification.

Respectfully submitted,

Date: 5/6/94

Richard Mayberry

Art Block, Esquire
Richard Mayberry, Esquire
Counsel For Respondents

Suite 500
888 Sixteenth Street, NW
Washington, DC 20006
Telephone: 202-785-6677

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

JUL 7 8 44 AM '94

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 7, 1994

SENSITIVE

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

SUBJECT: MUR 3938- Respondents' Request for a Stay

I. BACKGROUND

On May 6, 1994, respondents, Lenora B. Fulani, Fulani for President and Rachel Massad, as treasurer, Francine Miller, and Frederick Newman filed a motion for reconsideration of the legal adequacy of the complaint filed by Kellie Gasink on February 28, 1994.[1] See Attachment 1. On May 16, 1994, the Commission denied respondents' motion to require resubmission to the Commission of the June 10, 1993, letter that was referenced in and attached to the complaint. On this same date, the Commission denied respondents' alternative motion to take no further action on the June 10, 1993, letter that was referenced in and attached to the complaint.

On June 17, 1994, respondents filed a complaint against the Commission, No. 94-Civ-4461 (KTD), in United States District Court for the Southern District of New York.[2] See Attachment 2. The complaint alleges that the Commission is in violation of Section 437g and the plaintiffs' constitutional rights because it opened an enforcement matter "in which it is reviewing allegations contained in an unsworn complaint consisting of a 5-page letter charging the plaintiffs with a litany of civil and criminal violations" and "allegations in a newspaper article which names as sources the complainant and a close associate of

---

1. The complaint was initially received on February 7, 1994 but was returned to the complainant because it was improper. The complainant took the steps necessary to make the complaint proper and resubmitted it to the Commission on February 28, 1994.

2. This Office notes that Litigation staff have been in contact with respondents' counsel regarding the complaint which was filed with the court.

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hers, even though the complainant has not sworn to the truth of the allegations in the article." See Attachment 2, Page 2. On June 20, 1994, the respondents submitted a request to the Commission for a stay in this matter pending adjudication of these issues. See Attachment 3.

II. FACTUAL AND LEGAL ANALYSIS

Respondents (plaintiffs) are "challenging the Commission's practice of asserting jurisdiction over allegations in unsworn statements by complainants, and over unsworn allegations in newspaper clippings; and its practice of making individuals the subjects of enforcement proceedings solely based on unsworn allegations against them. See Attachment 2, Page 2. After filing their complaint in district court, respondents now request that the Commission grant a stay for all activity in MUR 3938 pending adjudication of these issues by the court. Respondents state that if the Commission does not grant a voluntary stay, they will file for a Temporary Restraining Order and a Motion for Preliminary Injunction.

As noted in the May 12, 1994, memorandum to the Commission, this Office concludes that Ms. Gasink's submission, the one paragraph complaint and attachments, constitute a proper complaint and meets the requirements of 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4. In addition, since submitting her complaint on February 28, 1994, Ms. Gasink has submitted a sworn and notarized statement verifying the statements made in her June 10, 1993, letter to the Manhattan District Attorney.[3] See Attachment 4. Thus, the issue regarding unsworn allegations in the the June 10, 1993, letter is now moot. In regard to the newspaper article at issue, this Office notes that the newspaper article merely summarizes the statements made by Ms. Gasink in her June 10, 1993, letter to the Manhattan District Attorney. Because Ms. Gasink has sworn to the statements made in the June 10, 1993, letter and the newspaper article merely summarizes the statements made in the letter, there are no additional allegations in the newspaper article to which Ms. Gasink has not sworn. Thus, the issue of unsworn allegations in the newspaper article is also moot.

Therefore, this Office recommends that the Commission deny the respondents' request for a stay in MUR 3938 pending adjudication of these issues by the United States District Court for the Southern District of New York.

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3. Litigation staff have provided a copy of Ms. Gasink's sworn and notarized statement to counsel for the respondents.

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III. RECOMMENDATIONS

1. Deny respondents' request for a stay in MUX 3938 pending adjudication of the issues identified in the complaint filed in the United State District Court for the Southern District of New York.

2. Approve the appropriate letter.

Staff Assigned: CED

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 15, 1994

Arthur R. Block, Esq.
72 Spring Street, Suite 1201
New York, NY 10012

RE: MUR 3938
Lenora B. Fulani, Fulani for President
and Rachel Massad, as treasurer,
Francine Miller, and Frederick Newman

Dear Mr. Block:

This letter is in reference to the June 17, 1994, request for a stay which you submitted in the above-noted matter on behalf of your clients, Lenora B. Fulani, Fulani for President and Rachel Massad, as treasurer, Francine Miller, and Frederick Newman. The Commission has considered the request and on July 12, 1994, decided to deny your clients' request for a stay.

If you have any questions regarding this matter, please contact Mary Taksar at (202) 219-3400.

Sincerely,

Lois G. Lerner
Associate General Counsel

cc: Richard Mayberry, Esq.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Lenora B. Fulani;	)	MUR 3938
Fulani for President and Rachel	)	
Massad, as treasurer;	)	
Francine Miller;	)	
Frederick Newman - Respondents'	)	
Request for a Stay.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on July 12, 1994, the Commission decided by a vote of 6-0 to take the following actions in MUR 3938:

1. Deny respondents' request for a stay in MUR 3938 pending adjudication of the issues identified in the complaint filed in the United State District Court for the Southern District of New York.

2. Approve the appropriate letter, as recommended in the General Counsel's Memorandum dated July 7, 1994.

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision.

Attest:

7-12-94
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Thurs., July 07, 1994 8:44 a.m.
Circulated to the Commission: Thurs., July 07, 1994 11:00 a.m.
Deadline for vote: Tues., July 12, 1994 4:00 p.m.

bjr

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ARTHUR BLOCK
ATTORNEY AT LAW
72 Spring Street, Suite 1201, New York, NY 10012 (212) 966-0404

06C 1228

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
MAY 6 2 12 PM '94

May 5, 1994

BY HAND

Federal Election Commission
Office of General Counsel
999 E St. N.W.
Washington, DC 20463

re: Gasink v. Lenora B. Fulani for President et al.
MUR 3938

Dear Sir or Madam:

Please find enclosed the response of respondent Francine Miller, Esq. in the above-referenced MUR. Ms. Miller's response is due on May 6, 1994.

These materials are also submitted on behalf of respondents Dr. Lenora B. Fulani, Dr. Fred Newman and Rachel Massad. However, the due date for responses for Fulani, Newman and Massad is May 13, 1994. Please be advised that the latter three respondents may be submitting additional materials on or before May 13, 1994. (I would expect that any such materials would also be accepted as a supplement to the response of Ms. Miller.)

Finally, my co-counsel in Washington D.C., Richard Mayberry, Esq. is filing on May 6, 1994, a motion to the Commissioner directly pertaining to this MUR.

If you have any questions, please feel free to contact me.

Very truly yours,

Arthur R. Block

ARB/bp
encs.
cc: Lenora B. Fulani, Ph.D.
Francine Miller, Esq.
Rachel Massad
Fred Newman, Ph.D.
Richard Mayberry, Esq.

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ARTHUR BLOCK
ATTORNEY AT LAW
72 Spring Street, Suite 1201, New York, NY 10012 (212) 966-0404

MAY 6 2 11 PM '94

May 5, 1994

BY HAND

Federal Election Commission
Office of General Counsel
999 E. St. N.W.
Washington, D.C. 20463

re: Gasink v. Lenora B. Fulani for President et al.;
MUR 3938

Dear Sir or Madam:

This letter contains legal argumentation in support of respondents' contention that the Federal Election Commission ("Commission") should find no reason to believe a violation has occurred, and dismiss the complaint of Kellie Gasink.

Submitted herewith are affidavits of respondents Francine Miller, Dr. Lenora B. Fulani, Dr. Fred Newman and Rachel Massad, as well as affidavits from Dr. Daniel Friedman, Doris Kelly and Wilton Duckworth.

What is Properly Before the Committee

Complainant Gasink's submission to the Commission consists of two statements by the complainant herself -- a fifteen line sworn statement dated January 31, 1994 addressed to the Federal Election Commission and an unsworn copy of a six page single spaced letter dated June 10, 1993 addressed to the "Manhattan District Attorney, Racquets [sic.] Unit" with a notary stamp and a signature purporting to be that of the notary affixed at the end. No supporting documentation or affidavits were submitted. The complainant did, however, attach a copy of an article from the November 5, 1993 New York Daily News reporting the leak of an investigation by the Manhattan District Attorney, apparently opened at complainant's request.

In a letter to complainant Gasink dated February 8, 1994, the Commission advised her that pursuant to 2 U.S.C. § 437g her complaint could not be considered unless it was sworn to and notarized. Gasink corrected this deficiency with regard to the 15 line document dated January 31, 1994 by re-executing it and swearing to its truth before a notary public on February 22,

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1994. Despite the Commission's explicit directions, Gasink did not take this action regarding the June 10, 1993 letter to the District Attorney. Moreover, the former document does not specifically incorporate the latter by reference. It simply recites that she is "enclosing my statement to the Manhattan District Attorney's office..." Gasink's refusal to swear to the contents of the June 10, 1993 statement signifies a lack of personal knowledge or even information and belief as to the truth of her statement. Whatever her motive, however, the Commission is without power to proceed further with the allegations therein under § 437g which states, inter alia:

> (1)... Such complaint shall be in writing, signed and sworn to by the person filing such complaint, and shall be made under penalty of perjury and subject to the provisions of section 1001 of Title 18.

The Commission's February 8, 1994 letter states, inter alia:

> In order to file a legally sufficient complaint, you must swear before a notary that the contents of your complaint are true to the best of your knowledge and the notary must represent as part of the jurat that such swearing occurred.... We regret the inconvenience these requirements may cause you, but we are not statutorily empowered to proceed with the handling of a compliance action unless all the statutory requirements are fulfilled.

(Emphasis added.) A full copy of the February 8, 1994 letter is annexed as Exhibit A to the Affidavit of respondent Fulani. The above directive is in accord with 11 CFR § 111.5 which provides that no action shall be taken on the basis of an uvervified complaint.

Respondent's Washington, D.C. counsel has attempted to seek clarification from the Commission on this issue. He was advised this morning that the Enforcement Division has taken the position that both statements will be considered sworn on the theory that the sworn statement incorporates the unsworn one by reference,

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the specific language quoted above notwithstanding.[1] Washington, D.C. counsel is preparing a motion to bring this issue to the full Commission. Clearly, respondents' right to due process is violated by denial of the protection afforded by § 437g and by being called upon to make a specific response to unsworn allegations in a proceeding that can lead to criminal prosecution. Likewise, to the extent that Gasink's unsworn statement is treated as if she has sworn to it, the Commission may be placing her in jeopardy of criminal prosecution. The ramifications of this for other complainants and respondents before the Commission makes it imperative for the full Commission to take a public position on this matter.

Respondents hereby deny the allegations in both of Gasink's statements, but in order to preserve the protection granted them under § 437g, they have elected not to respond further to the unsworn statement of June 10 1993.

The sworn statement alleges:

1. that the records of the "Lenora B. Fulani for President '92 campaign" reveal payment to Gasink of $500 that she claims never to have received or known about.

2. that unnamed "others" similarly listed never received "the money we were listed as having received."

The unsworn statement contains three kinds of allegations: those concerning federal campaign finance law and regulations; those concerning other potential criminal or civil liability; and those which are essentially political in nature. It is helpful to consider some of these allegations to the extent that they give insight into complainant's modus operandi and her lack of credibility. It is little wonder that she has declined to swear to the statement.

---

[1]Respondents submit that a sounder analysis is that Gasink initially submitted two complaints to the Commission, the longer of the two being a resubmission of a complaint that had already been submitted to the Manhattan District Attorney. Both were defective, but Gasink elected to remedy the defect only as to one. Thus, there is only one complaint before the Commission, the 15 line statement dated January 31, 1994.

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For example, as the affidavit of Francine Miller states, Gasink claims (on page 2) that 13 Committee vendors "...were paid nearly $1 million dollars by the Fulani campaign, however, they delivered almost no goods or services to the campaign...." This is a blatant falsehood. Miller's affidavit describes the services performed by three vendors, Ilene Advertising, Automated Business Services and Castillo Communications. The Commission's own auditors carefully reviewed these payments and the billings to support them and found nothing out of order.

Gasink's unsworn statement, on page 4, lists Wilton Duckworth and Doris Kelly as two of a number of persons "who were listed as having received money [who have] said they never received any money from the campaign." In her sworn statement, Gasink refers to unnamed people, "...that I know of that were listed on campaign records that never received the money [they] were listed as having received." Submitted herewith are affidavits by Wilton Duckworth, and Doris Kelly, sworn to on May 4, 1994, in which they state <u>under oath</u> that they did work for the campaign and were paid for this work.

There is also Gasink's accusation concerning "inflated" salaries of $500 per week or more (page 4). To call compensation at an annual rate of $26,000 for a more than full time job "inflated" is ludicrous. Finally, there is Gasink's outrageous lie that, "Fran Miller carries a gun and...." Miller's <u>sworn</u> affidavit denies this.

One must question the motives of someone who would make such obviously untrue charges against her former colleagues. The affidavits of Dr. Lenora B. Fulani and Dr. Fred Newman, and the documents annexed to them, show that Gasink, along with her paramour, William Pleasant, are former activists and colleagues of respondents who have chosen to express their political disagreement by vilifying respondent Newman; by attempting to drive a wedge between him and respondent Fulani; by the crude ploy of suggesting that Fulani is Newman's

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puppet; by infantile telephone harassment;[2] and by dangling bait in front of various law enforcement and media representatives.[3]

The Lack of Evidence

What is striking about all of Gasink's allegations, sworn and unsworn, is the complete lack of evidence in support of them. None are made on personal knowledge under oath except for the $500 claimed to be listed as paid to complainant Gasink.[4] Moreover, they are, in most cases, not made with sufficient specificity to formulate a response other than a blanket denial of wrongdoing. For instance, the Commission (and respondents) are not told when, where, how and how much money was allegedly funnelled to Newman, to say nothing about the whereabouts of these funds or how Newman allegedly disposed of them. Nor are we told the description, date and precise manner in which any FEC document was allegedly falsified. Nor has the complainant enlightened us as to the names of persons who allegedly gave involuntary campaign contributions, when they were given, in what amounts and the means by which persons were induced to do so, or when, where and to whom respondent Newman allegedly gave cash to be converted into matchable contributions.

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[2] The attached affidavit of Dr. Daniel Friedman sworn to on the 4th Day of May, 1994, documents six harassing phone calls placed to respondent Newman from complainant Gasink's home telephone.

[3] Seven months after writing her letter to the Manhattan District Attorney, Gasink decided to attempt to enlist the Commission's investigative resources on behalf of her cause by giving the Commission the identical (unsworn) statement she had given to the District Attorney. Presumably, if Gasink had obtained any evidence corroborating her allegations during the intervening period of seven months she would have included that information in her submission to the Commission.

[4] In fact, the Lenora B. Fulani for President Committee's (the "Committee") FEC filings reveal only two payments to Gasink, both in the form of checks for $225 drawn on November 15 and 29, 1991. Copies of these checks are annexed to the affidavit of the Committee's treasurer, Francine Miller.

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To the extent that Gasink's statements are specific, the following must be noted. First, many of them are not actually verifiable, depending as they do on the word of one person against another. For example, it is impossible to conclusively verify whether campaign manager Francine Miller did or did not carry a gun on or about June 10, 1993 when Gasink made the charge, "Fran Miller carries a gun ..." Other charges, including some of the most inflammatory ones, are made in language that falls short of a definite allegation, e.g., "Jini Berman and Ed Costa supposedly have some of these guns registered in their names." (emphasis added) Another technique is for Gasink to presume to know what is in the minds of others. Thus, "Fulani might not have known how much money was being taken from her campaign, but that is simply because she would have refused to allow herself to know."

Finally, it must be pointed out that the Commission has conducted a thorough audit of the Committee's finances. It found no evidence of funds being diverted or spent for non-permissible purposes, other than a technical finding that receipts for $1,394 worth of money orders were lost, and therefore, they were not a qualified campaign expense. The two other findings had to do with persons and an entity (the International Peoples' Law Institution) ("IPLI") extending credit to and performing services for the campaign which were not sufficiently paid for. The Audit Staff's finding that the Committee was the recipient of improper services from the IPLI is a far cry from the wild claims of payments for no services at all that Gasink makes. Indeed, the Audit Staff's findings refute the entire thrust of the complaint.

The Commission's policy guidelines dated December 13, 1993 set forth the following guidelines for the exercise of its discretion in deciding which complaints merit action, and which do not justify the allocation of scarce resources:

> Although not exhaustive, the factors the FEC will use in prioritizing cases include: the presence of knowing and willful intent; the apparent impact the alleged violation had on the election; the amount of money involved; the age and timing of the violation; and whether a specific legal area needs special attention.

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Application of these criteria to the substance of the sworn 15 line statement before the Commission, Gasink's allegation that the Committee's records show payment of $500 she never received, makes clear that further action is not warranted. There is no showing of unlawful intent or even that anything unlawful occurred. There was no impact on the election. The amount of money involved in the sworn allegation is a tiny fraction of the Committee's budget of over $4 million. The alleged violation occurred more than two years ago, in November of 1991, when two checks were written payable to Gasink, and she admits that she waited an extended period of time after her "discovery" of the alleged violation before filing her complaint with the Commission[5]. The allegation raises no legal issue of any general interest. The question of whether or not Gasink received $500 dollars from the Committee (or the money in the amounts listed in the Committee's filing) turns completely on her credibility, and therefore, raises no legal or policy issues which merit Commission review.

Gasink admits to having worked for the Committee during the period in question. The fact that the two checks by which payment was made for her work were endorsed by someone other than her is adequately explained by respondent Miller's affidavit. While respondent Miller has no direct recollection of the cashing of these particular checks, she described a practice with regard to checks signed and cashed by persons other than the payee. It can be inferred from this practice that, if the check was not endorsed by Gasink, that Gasink's name was written on the back of the check by Miller or one of her assistants and taken to the

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[5] Not only did Gasink delay coming to the Commission, she did so even after preparing a detailed written statement of her allegations. Clearly, Gasink's timing of her submissions to different law enforcement agencies suggests that she is manipulating her filings of complaints for her own purposes rather than merely acting as a good citizen. Such delays are highly prejudicial to the respondents and should not be tolerated by the Commission. By filing a complaint in 1994 about events occurring in 1991, Gasink causes the opening of an enforcement matter against the respondents that could become a cloud on current and future federal election activities and applications for matching funds. A prompt dismissal of this complaint would eliminate any prejudice to respondents.

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Amalgamated bank by the person whose name appears below Gasink's, namely Miller or Berman (who assisted Miller). Miller's affidavit states that she derived the authority to do this from the ideological commitment she shared with Gasink at the time and from their work in furtherance of that commitment over a number of years. In this regard, respondent's point to the affidavit of Wilton Duckworth, submitted herewith, which confirms Miller's understanding of her authority. Duckworth's confirmation is significant for two reasons: first, a check payable to him was signed on the back by someone other than him; second, Duckworth's name appears in Gasink's unsworn statement as someone who, she says, "never received any money from the campaign." Duckworth, of course, states, under oath, that he was paid by the campaign for his services. The affidavit of Doris Kelly states, under oath, that she was paid for her work as well, contrary to Gasink's complaint.

It should be further noted that Gasink brought this matter to the attention of the Manhattan District Attorney. To the extent she charges a common law forgery by Miller, that is the proper place for that issue to be considered, although it is and has been respondents' position that Miller's actions were completely legal.

There is no sound basis for the Commission to devote further resources to this matter. A proper exercise of its prosecutorial discretion under the authority cited above, would be to decline further action. To do otherwise would be to allow itself to be used as an instrument in carrying out a political and personal vendetta by Gasink and William Pleasant against the respondents herein.

Conclusion

For all of the reasons set forth above, no finding of reason to believe a violation has occurred can be made. The complaint should be dismissed.

Respectfully submitted,

Arthur R. Block

Arthur R. Block

ARB/bp
cc: Richard Mayberry, Esq.

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BEFORE THE FEDERAL ELECTION COMMISSION

UNITED STATES OF AMERICA

RECEIVED FEDERAL ELECTION COMMISSION OFFICE OF GENERAL COUNSEL
MAY 5 2 11 PM '94

KELLIE GASINK,	:	
Complainant,	:	MUR 3938
-against-	:	AFFIDAVIT OF FRANCINE MILLER
LENORA B. FULANI FOR PRESIDENT, LENORA B. FULANI, Candidate, FRANCINE MILLER, Treasurer, RACHEL MASSAD, Treasurer, FREDERICK NEWMAN,	:	
Respondents.	:	

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

FRANCINE MILLER, being duly sworn, deposes and says:

1. I serve as the treasurer of the 1992 Lenora B. Fulani for President Committee ("Committee").

2. My responsibilities have included managing the Committee's finances and ensuring compliance with the federal election law.

3. I am an attorney licensed to practice in the State of New York, having graduated from New York Law School in 1987 where I was a member of the Board of Editors of the Law Review. I am presently employed as an associate at the law firm of Proskauer Rose Goetz and Mendelsohn in New York City.

4. I make this affidavit to respond to the complaint filed by Kellie Gasink.

5. One of the most challenging aspects of my job was to apply federal campaign finance law and FEC regulations, which were

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designed for presidential candidacies of the two major parties and the political action committees which support them, to a predominantly volunteer, undercapitalized operation which raised money from tens of thousands of small contributors.

6. The final audit report for the Committee, which the Federal Election Commission approved on April 21, 1994, shows that the finances of Dr. Fulani's 1992 campaign (like the 1988 campaign in the previous election cycle) were fundamentally sound, well documented, and in compliance with federal law.

7. Gasink submits two documents, as well as a copy of a newspaper article, in support of her complaint. My attorneys advise me that pursuant to 2 U.S.C. § 437g the Commission can only consider the document which is sworn to by her, namely, the 15 line document dated January 31, 1994. Therefore, I will not be responding to the unsworn document. However, that is not in any sense to be taken as an admission of any wrongdoing. As my attorney sets forth in the legal argumentation submitted herewith, and in a motion to be submitted by Washington D.C. counsel, to do otherwise would be to give up the protections provided by § 437g. I do wish to point out, however, that as for Gasink's unsworn claims of systematic and widespread fraud and corruption in the area of Committee expenditures, the FEC auditors did not find any questionable transactions or practices of this kind.[1]

8. In fact, the two areas of possible noncompliance

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[1] The only expenditure issue noted by the Audit Staff in the final audit report was that the cost of postal money orders that were lost by campaign workers was not a qualified campaign expense. This resulted in a repayment of $1,394 by the Committee to the U.S. Treasury.

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found by the Audit Staff contradict the thrust of Gasink's statement. Gasink charges that one of the law firms used by the Committee, the International Peoples' Law Institution ("IPLI"), overcharged and/or double-billed the Committee. The IPLI's billings were, in fact, a focal point of review by the Audit Staff and the Office of General Counsel. But the Audit Staff found nothing excessive about the amounts of the IPLI's billings, which were explained in detailed statements submitted to the Committee and reviewed by the auditors. To the contrary, the Audit Staff found that the IPLI may have been too generous in allowing the Committee to defer payment of part of the legal fees until payments of matching funds were received from the Treasury. There was a finding of potentially excessive contributions from the IPLI, not excessive charges.[2]

9. The other area of possible noncompliance found in the Final Audit Report concerned the use of personal credit cards to charge campaign expenses that were then paid by the campaign. Again, this finding does not indicate excessive expenditures, but rather alleged excessive "contributions."

10. Moreover, the extent to which Gasink has blatantly

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[2] The Committee strenuously protested that finding to the Commission. See Letter to the Commissioners from Arthur R. Block, Esq., dated April 20, 1994, in the Commission's files. In response to the Interim Audit Report, the Committee provided the audit staff with documentation that it believed sufficient to show that the IPLI's retainer agreement with the Committee was comparable to IPLI retainer agreements with other clients. However, after receiving this documentation, the Audit Staff did not inform the Committee that it wanted additional documentation. Consequently, the Committee did not have an opportunity to submit further documentation to allay this concern of the Audit Staff prior to the Commission's adoption of the Final Audit Report.

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lied in her unsworn statement, a copy of a letter to the Manhattan District Attorney dated June 10, 1993, seriously calls into question the credibility of her entire complaint. For example, on page two of this unsworn statement, Gasink lists 13 entities and claims that, "According to FEC documents, these businesses were paid nearly $1 million dollars by the Fulani campaign, however, they delivered almost no goods and services to the campaign and Newman later took the money."

11. One of the entities listed is the IPLI, and, as pointed out above, the audit staff found possible underbilling, not overbilling for the services performed.

12. A look at several other entities whose billings passed the scrutiny of the audit staff, tells much about Gasink's credibility:

a. Ilene Advertising was paid $140,412.21 by the Committee for services during the primary period.[3] These services included designing and arranging for printing of the bulk of the campaign's flyers, brochures, stationery and other written material, as well as designing and arranging for the production of buttons and T-shirts. As is the case with most advertising agencies, Ilene Advertising contracted for space or time in various media (for which it received a discount) or for printing and production and billed the campaign. Ilene Advertising also

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[3]The dollar amounts are based on a review of FEC primary filings recently conducted by Janet Mangia, a former campaign volunteer who is presently active in the New Alliance Party. I am confident that they are substantially accurate. I cannot, however, state under oath that these dollar amounts are absolutely without error.

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developed a media campaign for use in the New Hampshire primary.

b. $55,100 was paid to Automated Business Services ("ABS") for services during the primary period. ABS set up and operated a computerized payroll system for the campaign, assisted in preparation of FEC Form 3P and logged receipt and expenditure information.

c. $210,337.27 was paid to Castillo Communications for public relations services during the primary period. This included making one of its principals, Madelyn Chapman, available to the campaign on a full time basis. Castillo Communications sent out press releases, contacted media by fax and telephone all over the country, organized press conferences and booked Dr. Fulani for numerous interviews and radio and television appearances.

13. Gasink's unsworn statement claims, on page 4, again without any evidence, that campaign expenditures for labor were inflated or falsified. She begins by noting the "inflated" salary of $500 per week paid to some campaign workers. To call compensation at an annual rate of $26,000 for a more than full time job "inflated" is ludicrous.

14. I might add, in response to the allegation on page 5 of the unsworn statement, that I do not and never have carried a gun.

15. The above makes obvious why Gasink (who, on information and belief, is a law student and works for the Bronx District Attorney's Office) elected not to swear to her June 10, 1993 statement.

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16. As for Gasink's sworn statement concerning money she claims to have never received, let me begin by giving some background on the Committee's financial procedures.

17. It was inconvenient for many campaign workers to cash their paychecks at one of the three branches of the Amalgamated Bank, where the Committee had its account. Furthermore, a number of campaign workers (including homeless individuals the campaign hired to gather petition signatures for Dr. Fulani) did not have bank accounts and preferred to be paid in cash.

18. Therefore, it was not uncommon for me or one of my staff members to cash people's paychecks or reimbursement checks and then get the money to the individuals. For the homeless people who worked for the campaign, this is always how they were paid -- checks were made out to the individual to meet the FEC's documentation requirements, and the checks were cashed for them at the Amalgamated Bank.

19. The tellers at the Amalgamated Bank branch most often used by the Committee knew me and my staff members. Generally, the procedure we used for cashing checks was that I (or my staff member) would first write the name of the payee on the back of the check, and then I (or my staff member) would sign my (or the staff member's) own name underneath the name of the payee. There were no check cashing cards used in these transactions. The tellers would identify me (or one of my assistants) by sight, and then cash the check knowing that I (or my assistant) was not the payee.

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20. The campaign utilized the services of ideologically committed activists who were willing to perform a variety of tasks including fundraising, petitioning, research and clerical work for what the campaign was able to pay them. Among the checks cashed at Amalgamated Bank were some of the checks representing compensation to these activists. As someone who shared their ideological commitment and worked with them over the years, I believed that they had given me the authority to do this.

21. Gasink alleges that "I was listed on her [Fulani's] campaign records as receiving $500 that I never received, nor knew anything about." (Complaint letter dated Jan. 31, 1994).

22. Gasink was one of the ideologically committed activists described above. As she says in her statement of June 10, 1993, she was such for at least four years.

23. The Committee's records were reviewed to try to shed light on her allegation. Two checks were found, each in the amount of $225 made payable to Kellie Gasink. I attach a copy of the front and back of each of these checks as Exhibits A and B. No records were found that support Gasink's claim that the Committee paid her $500, rather than $450.

24. The checks confirm the practice for cashing checks at the bank branch that I described above. Committee check number 2439, dated November 29, 1991, is payable to Kellie Gasink. (Exhibit A) The back of the check indicates that Kellie Gasink's name was written first on the check and then I signed my name underneath hers. Although I do not have a specific recollection of cashing this check, I would infer from the usual practice that I

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(or one of my assistants) wrote Gasink's name on back of the check, followed by my signature, and cashed the check at the Amalgamated Bank. My best recollection is that the money was given to Gasink.

25. The other check is number 5444, dated November 15, 1991. (Exhibit B) On the back, Kellie Gasink's name has been written. Underneath is the signature of Jini Berman. Ms. Berman was Dr. Fulani's secretary, and she was available from time to time to assist me. I believe Ms. Berman cashed this check at the Amalgamated bank. Again, my best recollection is that the money was given to Gasink.

26. For the above reasons, and those set forth in the other papers submitted in response to the Gasink complaint, I respectfully request that the Commission take no further action.

Francine Miller
FRANCINE MILLER

Sworn to before me this
6th day of May, 1994

HARRY KRISKY
Notary Public, State of New York
No. 31-7365234
Qualified in New York County
Commission Expires February 28, 1995

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LAW OFFICE OF
HARRY KRESKY

250 WEST 57TH STREET, SUITE 2015 · NEW YORK, NY 10107
TELEPHONE: 212-581-1516 · FAX: 212-581-1352

OGC 1321

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
MAY 13 10 03 AM '94

May 6, 1993

BY FAX AND REGULAR MAIL

Hon. Lawrence Noble
General Counsel
Federal Election Commission
999 E. St. N.W.
Washington, D.C. 20463

re: Gasink v. Lenora B. Fulani for President,
et al.; MUR 3938

Dear Mr. Noble:

Please accept the following errata to the Merits Reason to Believe Brief filed today under the letterhead of Arthur Block, Esq., lead counsel for respondents.

The last sentence of the last paragraph on page 2 should read:

> "He was advised this morning that the Enforcement Division has taken the position that the January 31, 1994 letter is properly verified and therefore the entire submission will be considered in its entirety. The only way OGC could consistent with the statute take this position is to incorporate the unsworn one by reference...."

The sentence continues as is at the top of page 3.

I am writing this letter after telephonic consultation with Mr. Block, who presently is out of the state and on his authority. He will be at his office on Monday morning, should further consultation be needed.

Respectfully yours,

Harry Kresky

Harry Kresky

cc: Richard Mayberry, Esq.
Arthur Block, Esq.
(by fax and regular mail)

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OGC 1375

LAW OFFICE
Richard Mayberry & Associates
Fifth Floor
888 16th Street, N.W.
Washington, D.C. 20006

(202) 785-6677
Fax (202) 835-1012

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
MAY 17 2 56 PM '94

May 13, 1994

By HAND

received
5/16/94

CONFIDENTIAL ENFORCEMENT MATTER
Trevor Potter
Chairman
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 3938

Dear Mr. Chairman:

I am co-counsel with Arthur R. Block, Esquire, for the Respondents in the above captioned enforcement matter, the Fulani For President Committee; its Treasurers Francine Miller and Rachel Massad; the presidential candidate Lenora B. Fulani; and the campaign manager Frederick Newman. Today is the response date for all of the Respondents except for Miller (whose response was timely filed on May 6, 1994). This letter is in furtherance of the Respondents 'Motion for Resubmission of June 10,1993 Complaint to Complainant for Verification, or in the Alternative for Notification to Complainant that No Further Action Will Taken On the Basis of the Complaint' ("*Motion*").

Specifically, Respondents request that the Federal Election Commission ("*FEC*" or "*Commission*") consider the Motion prior to assignment of the matter to an Enforcement Attorney for preparation of the OGC Report containing its 'reason to believe' ("RTB") recommendation.

This permits bifurcation of the Commission's proceedings in connection with this matter. First, we urge the Commission to pass on the Motion to define the validity and scope of the allegations contained in the Gasink Complaint(s). This is essential to ensure the integrity of the processing of MUR 3938 under Section 437g. As asserted in the Motion, the verification of the documents filed as a complaint are contested and at issue.

It need not be stated that the Commission has the authority, and we would submit the obligation, *sua sponte* (and irrespective of this letter and the Motion) to consider whether the second letter

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dated June 10, 1993 to the Manhattan District Attorney is verified in accordance with the statute before Commission attorneys start evaluating whether it provides a basis for reason to believe that a violation of the Campaign Act has occurred by the Respondents.

Please notify us in writing of the manner, specifically the sequence, in which the full Commission will address the issues raised in the Motion. We would suggest that a Commission decision as to whether there are two complaints or one complaint will shorten, rather than lengthen, the processing of MUR 3938.

If OGC is responding to one specific allegation contained in the one paragraph letter dated January 31, 1994, rather than to a barrage of unverified charges contained within the June 10, 1993 letter covering five pages single spaced which alleges civil and criminal wrongdoing by persons not mentioned in the verified one paragraph complaint, the administrative burden to the Commission is obviously less.

This bifurcated procedure serves the best interest of justice for the reasons set forth in the Motion, is not inconsistent with Section 437g, and protects the constitutional rights of the Respondents.

We thank you in advance for you consideration of this letter.

Sincerely yours,

Richard Mayberry

Richard Mayberry

Arthur Block
Counsel to Respondents

cc:

(1) All Commissioners (Via FAX 202-208-3333)
(2) Lawrence Noble, Esquire (By FAX to 202-219-3923)
(3) Dr. Lenora B. Fulani (By FAX to 212-431-3516)

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FEDERAL ELECTION COMMISSION
SECRETARIAT
MAY 12 3 55 PM '94

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 12, 1994

SENSITIVE

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

SUBJECT: MUR 3938- Lenora B. Fulani, Fulani for President and Rachel Massad, as treasurer, Francine Miller, and Frederick Newman

I. BACKGROUND

On May 6, 1994, respondents filed a motion for reconsideration of the legal adequacy of the complaint filed by Kelly Gasink on February 28, 1994.[1] The complaint at issue consists of a one-paragraph letter to the Commission in which the complainant states that her name was listed on the Fulani Committee's campaign records as having received $500 but that she neither received $500 from the Committee nor knew anything about the $500. Ms. Gasink states in the complaint letter that she is enclosing a statement which she made to the Manhattan District Attorney regarding this issue along with a newspaper article which appeared in the Daily News.

II. FACTUAL AND LEGAL ANALYSIS

Pursuant to Section 437g(a)(1), a complaint must be in writing, signed and sworn to by the person filing the complaint, notarized, and be made under penalty of perjury subject to the provisions of 18 U.S.C. § 1001. Commission regulations state that a complaint should conform to the following provisions: 1) it should clearly identify each person or entity who is alleged to have committed a violation; 2) statements not based on personal knowledge should identify the source of information

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1. The complaint was initially received on February 7, 1994 but was returned to the complainant because it was improper. The complainant took the steps necessary to make the complaint proper and re-submitted it to the Commission on February 28, 1994.

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which gives rise to the complainant's belief in the truth of such statements; 3) it should contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction; and 4) it should be accompanied by any documentation supporting the facts alleged if such documentation is known or available to the complainant. 11 C.F.R. § 111.4.

As noted above, Ms. Gasink's submission to the Commission included a one-paragraph complaint and two attachments which were referenced in the complaint. The first attachment to the complaint, a June 10, 1993, letter from Ms. Gasink to the Manhattan District Attorney, discusses possible embezzlement of campaign funds by Frederick Newman, the Committee's campaign manager. The second attachment to the complaint, a newspaper article which appeared in the Daily News on November 5, 1993, indicates that the Manhattan District Attorney is probing into possible embezzlement of campaign funds by Mr. Newman and highlights details regarding this issue which Ms. Gasink provided in her letter to the Manhattan District Attorney.

Respondents argue that the complainant actually filed two complaints with the Commission. According to the respondents, the one-paragraph letter to the Commission dated January 31, 1994 is one complaint and the June 10, 1993, letter from Ms. Gasink to the Manhattan District Attorney is a second complaint. Respondents contend that the January 31, 1994, letter addressed to the Commission meets the requirements of 11 C.F.R. § 111.4 because it was subscribed and sworn to and notarized but that the June 10, 1993, letter from Ms. Gasink to the Manhattan District Attorney fails to meet the requirements of Section 111.4 because it was not subscribed and sworn to before a notary.

Respondents state that "a plain reading of the [June 10, 1993] letter and the call for an investigation clearly demonstrates that it constitutes a second complaint." According to the respondents, the June 10, 1993, letter contains "a barrage of unsubstantiated charges" and "alleges civil and criminal wrongdoing by persons not mentioned in the verified one paragraph complaint." Respondents further argue that "it would be a misuse of the [Section] 437g complaint process to permit Ms. Gasink to manipulate the system by triggering a federal investigation on the basis of unverified allegations in the June 10, 1993 complaint [letter to the Manhattan District Attorney] against persons not named in the verified complaint."

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This Office concludes that Ms. Gasink's submission, the one-paragraph complaint and attachments, constitutes a proper complaint and meets the requirements of 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4. The complaint is in writing, was subscribed and sworn to before a notary on February 22, 1994, and is notarized. Ms. Gasink's complaint alleges federal election fraud and reporting violations and references two attachments in which Mr. Newman is identified as a participant in the alleged activity. The June 10, 1993, letter attached to the complaint elaborates upon and supports the allegations which Ms. Gasink makes in her complaint. For example, Ms. Gasink states in her complaint that "I was one of many people that I know of that were listed on her [Lenora Fulani's] campaign records that never received the money we were listed as having received" and her June 10, 1993, letter to the Manhattan District Attorney, she identifies the individuals to whom she generally refers in her complaint filed with the Commission. Thus, the June 10, 1993, letter constitutes documentation supporting the facts alleged in Ms. Gasink's complaint. 11 C.F.R. § 111.4(d)(4). The Daily News article also supports the allegations in Ms. Gasink's complaint and provides specific detail regarding the allegations in her complaint.[2]

Furthermore, Section 111.4 does not require that each page of a complainant's submission be subscribed and sworn to and notarized. Section 111.4 requires that the complaint itself be subscribed and sworn to and notarized and as noted earlier, the one-paragraph complaint letter meets these requirements.

Therefore, this Office recommends that the Commission deny the respondents' motion to require re-submission to the Commission of Ms. Gasink's June 10, 1993, letter attached to the complaint. This Office also recommends that the Commission deny respondents' alternative motion to take no further action on the June 10, 1993, letter attached to the complaint.

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2. Pursuant to Directive 6, news articles of possible violations may constitute the source of internally-generated matters. Under Directive 6, the general standard for determining whether an article will be the basis for Commission action depends upon such factors as the particularity with which the alleged violations are set out in the newspaper article and whether the allegations set forth are supported by in-house documents. If the Commission was considering only the Daily News article, it appears that the article would meet the requirements set out in Directive 6.

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III. RECOMMENDATIONS

1. Deny respondents' motion to require re-submission to the Commission of the June 10, 1993, letter that was referenced in and attached to the complaint.

2. Deny respondents' alternative motion to take no further action on the June 10, 1993, letter that was referenced in and attached to the complaint.

3. Approve the appropriate letter.

Attachments
1. Complaint
2. Motion

Staff Assigned: CED

9704380236 6

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Lenora B. Fulani;	)	MUR 3938
Fulani for President and Rachel	)	
Massad, as treasurer;	)	
Francine Miller;	)	
Frederick Newman.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on May 18, 1994, the Commission decided by a vote of 4-0 to take the following actions in MUR 3938:

1. Deny respondents' motion to require re-submission to the Commission of the June 10, 1993, letter that was referenced in and attached to the complaint.

2. Deny respondents' alternative motion to take no further action on the June 10, 1993, letter that was referenced in and attached to the complaint.

(continued)

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3. Approve the appropriate letter, as recommended in the General Counsel's Memorandum dated May 12, 1994.

Commissioners Aikens, Elliott, McGarry, and Potter voted affirmatively for the decision; Commissioners McDonald and Thomas did not cast votes.

Attest:

5-18-94
Date

for Delores Hardy
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat:	Thurs.,	May 12, 1994	3:55 p.m.
Circulated to the Commission:	Fri.,	May 13, 1994	12:00 p.m.
Deadline for vote:	Wed.,	May 18, 1994	4:00 p.m.

bjr

9704380236 8

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 24, 1994

Richard Mayberry, Esq.
Suite 500
888 16th Street NW
Washington, DC 20006

RE: MUR 3938
Lenora B. Fulani, Fulani for President
and Rachel Massad, as treasurer,
Francine Miller, and Frederick Newman

Dear Mr. Mayberry:

This letter is in reference to the motion which you submitted on May 6, 1994 on behalf of your clients, Lenora B. Fulani, Fulani for President and Rachel Massad, as treasurer, Francine Miller, and Frederick Newman. The Commission has considered the motion and on May 18, 1994, decided to deny respondents' motion to require re-submission to the Commission of the June 10, 1993, letter that was referenced in and attached to the complaint. On this same date, the Commission decided to deny respondents' alternative motion to take no further action on the June 10, 1993, letter that was referenced in and attached to the complaint.

If you have any questions regarding this matter, please contact Mary Taksar at (202) 219-3400.

Sincerely,

Lois G. Lerner
Associate General Counsel

cc: Arthur R. Block, Esq.

9704380236 9

ARTHUR BLOCK
ATTORNEY AT LAW
72 Spring Street, Suite 1201, New York, NY 10012 (212) 966-0404

FEDERAL ELECTION COMMISSION
ADMINISTRATIVE DIVISION
Jun 20 2 26 PM '94

June 17, 1994

JUN 20 2 41 PM '94
OFFICE OF GENERAL COUNSEL

BY FACSIMILE AND FEDERAL EXPRESS
Lawrence Noble, Esq.
General Counsel
Fedaral Election Commission
999 E St. N.W.
Washington, D.C. 2006

Re: Fulani v. FEC, S.D.N.Y., C.A. 94 Civ.4461(CBM)
MUR 3938

Dear Mr. Noble:

I am one of the attorneys representing the respondents in the above-referenced MUR, and in the above-referenced federal court action. The action was filed this afternoon, and a courtesy copy of the complaint is being sent to you with the hard copy of this letter by Federal Express for delivery on Monday morning.

This action, and the motion previously filed with the Commission by the respondents, raise serious issues about the authority and constitutionality of the Commission's consideration of unsworn allegations against my clients in its enforcement proceeding. My clients have been irreparably harmed, and will continue to be irreparably harmed, by this ongoing enforcement activity.

Plaintiffs request that the Commission agree to stay all activity in MUR 3938 pending adjudication of these issues by the federal courts. If the Commission will not agree to a voluntary stay, then plaintiffs will shortly file an application for a Temporary Restraining Order and a Motion for a Preliminary Injunction before Judge Motley.

Please contact me no later than noon on Tuesday, June 21, 1994, to inform me whether the Commission will consent to a stay, and, if it will, to discuss the terms of an appropriate stipulation. Thank you for your attention to this matter.

Very truly yours,

Arthur R. Block

Arthur R. Block

ARB/bp
enc. (with Federal Express only)
cc: Harry Kresky, Esq.
Richard Mayberry, Esq.
212901bn.lt1

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

DR. LENORA B. FULANI, DR. FRED NEWMAN, FRANCINE MILLER, RACHEL MASSAD, and LENORA B. FULANI FOR PRESIDENT,

Plaintiffs,

-against-

FEDERAL ELECTION COMMISSION,

Defendant.

----------X

94 Civ. 4461 (CBM)

COMPLAINT

Plaintiffs, by their attorneys, ARTHUR R. BLOCK and HARRY KRESKY, for their complaint respectfully show and allege the following:

Introduction

1. Although Congress conferred certain law enforcement responsibilities on the Federal Election Commission ("FEC" or the "Commission") in the Federal Election Campaign Act of 1971, as amended (FECA), 2 U.S.C. §§ 431 et seq., Congress severely limited the agency's discretion to decide who, what and when to investigate. Unlike some other federal agencies, the FEC does not have a roving authority to investigate persons engaging in the activity it regulates, i.e. First Amendment speech, association, and electoral campaigning.

2. FECA creates a procedure for private parties to initiate FEC investigations of alleged illegal conduct by filing complaints with the Commission. Congress specifically provided, however, that before the Commission could inquire into the

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allegations made by a private party, the person's complaint must be "signed and sworn to by the person filing such complaint . . . under penalty of perjury." 2 U.S.C. § 437g(a)(1).

3. If a complainant does swear to the truth of his or her allegations, then it triggers an immediate, mandatory FEC review of the substance of the charges. On the basis of this review, the Commission must take a vote on the question of whether or not to open a full investigation into the sworn allegations. At the conclusion of the inquiry and/or investigative process, the Commission's decision and the pleadings in the complaint investigation file are made public.

4. This action comes before the Court as a case of first impression challenging the Commission's practice of asserting jurisdiction over allegations contained in unsworn statements by complainants, and over unsworn allegations in newspaper clippings; and its practice of making individuals the subjects of enforcement proceedings solely based on unsworn allegations against them.

Synopsis of the Case

5. In direct violation of Section 437g, and of plaintiffs' constitutional rights, the defendant has opened an enforcement matter in which it is reviewing allegations contained in an <u>unsworn</u> complaint consisting of a 5-page letter charging the plaintiffs with a litany of civil and criminal violations.

6. The Commission also is reviewing allegations in a newspaper article which names as sources the complainant and a

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close associate of hers, even though the complainant has not sworn to the truth of the allegations in the article.

7. Plaintiffs made a motion to the full Commission requesting that the defendant either (a) return the unsworn letter to the complainant with a notice that for the FEC to consider the allegations the complainant must swear to the truth of them; or (b) cease and desist from any review of the unsworn allegations.

8. By letter dated May 24, 1994, the Commission notified plaintiffs that it had considered and voted upon the motion, and it was denied. This constituted final agency action with respect to a determination of the Commission's jurisdiction over the allegations contained in the unsworn letter and in the unsworn newspaper clipping.

9. Plaintiffs allege that the Commission has acted in excess of its statutory jurisdiction, in violation of the First Amendment of United States Constitution, and in a manner that is arbitrary, capricious and an abuse of discretion.

10. It is immaterial whether the Commission's current activities in connection with this enforcement matter are characterized as a review, a preliminary investigation, an inquiry, an investigation or in other terms. Plaintiffs' claim is that the Commission lacks jurisdiction to engage in <u>any</u> enforcement activities whatsoever with respect to the allegations contained in the 5-page unsworn letter and in the newspaper article. It lacks jurisdiction to name persons as respondents to

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an unsworn complaint and to request that those persons submit sworn responses to unsworn charges.

11. The Commission has created this case and controversy by refusing to take the simple step of mailing the unsworn letter and the newspaper clipping back to the complainant with a notice that the FEC only has jurisdiction to review those of the allegations in her 5-page letter (and in the newspaper article that uses the complainant and this same letter as a principal source) to which she will swear under penalties of perjury.

12. Plaintiffs seek, inter alia, a declaratory judgment that the Commission lacks jurisdiction to consider the allegations in the unsworn letter and in the news clipping; preliminary and permanent injunctive relief ordering the defendant to take no further review or investigative actions with regard to the allegations contained in the unsworn letter and news clipping, and to make no use of any information or materials generated in connection with its review and investigation heretofore; and a permanent injunction ordering the defendant to take all necessary steps to expunge from its files and institutional memory all information and materials pertaining to or arising from its review of the allegations in the letter and news clipping.

Jurisdiction and Venue

13. Plaintiffs' claims for relief arise under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202; the Mandamus

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Act, 28 U.S.C. § 1361; the Administrative Procedure Act, 5 U.S.C. §§ 701-706; and under the First Amendment.

14. Plaintiffs also have a right to judicial review under 2 U.S.C. § 437h, which provides a special procedure to bring a constitutional challenge to any provision of FECA, as amended, including a claim that a provision of FECA is unconstitutional as applied to the plaintiff. Pursuant to this procedure, the district court makes finding of fact and then certifies the constitutional issue to the Court of Appeals for hearing en banc.

15. Federal question jurisdiction is founded on 28 U.S.C. §§ 1331 and 1343. Venue is properly laid in this District under 28 U.S.C. § 1391(e)(3).

Parties

16. Plaintiff DR. LENORA B. FULANI ("Fulani") was a candidate for the office of President of the United States in 1988, and in 1992. In each of these elections, she qualified for and received payments (federal matching funds) from the Presidential Primary Matching Payment Account Act under 26 U.S.C. 9031 et seq. After each of these elections the FEC conducted, and concluded, a detailed audit of her campaign's finances as authorized by law.

17. On or about March 30, 1994, Fulani received notification from the Commission that it had named her as a respondent in a civil enforcement "matter under review," (MUR), based on materials sent to the FEC by complainant Kellie Gasink.

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The Gasink materials contained no sworn allegation that Fulani had violated any law. Nevertheless, the FEC notification to Fulani asked her to respond to the unverified materials, and urged Fulani to make her own response under penalties of perjury.

18. Fulani currently is a candidate for the nomination of the Democratic Party for the office of Governor of the State of New York. In addition to her current candidacy, and her two presidential candidacies, Fulani has previously been a candidate for the offices of Governor of the State of New York (1986 and 1990), Lieutenant Governor (1982) and Mayor of New York City (1985 and 1989). She intends to remain active in electoral politics and other First Amendment activities for the indefinite future. The defendant's unlawful investigatory activities damages and threatens to damage Fulani's electoral activities, associations and other First Amendment activities.

19. Plaintiff DR. FRED NEWMAN ("Newman") was the campaign manager of Fulani's 1992 presidential campaign. He also was the campaign manager of each of her other candidacies, is presently the campaign manager of her 1994 gubernatorial campaign, and intends on remaining active in electoral politics and other core First Amendment activities for the indefinite future.

20. On or about March 30, 1994, Newman received notification from the Commission that it had named him as a respondent in a civil enforcement "matter under review," (MUR), based on materials sent to the FEC by complainant Kellie Gasink.

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The Gasink materials contained no sworn allegation that Newman had violated any law. Nevertheless, the FEC notification to Newman asked him to respond to the unverified materials, and urged Newman to make his own response under penalties of perjury.

21. LENORA B. FULANI FOR PRESIDENT is the name of the authorized campaign committees of Fulani's 1992 presidential campaign. There are two separate entities, the primary election committee and the general election committee. The Commission has named the treasurer of each committee as a respondent. Plaintiff FRANCINE MILLER (Miller) was the treasurer of the Fulani for President primary campaign committee, and RACHEL MASSAD (Massad) was the treasurer of the Lenora B. Fulani general election committee.

22. Each of the individual plaintiffs resides in the City and County of New York, and Lenora B. Fulani for President has its principal office in the City and County of New York.

23. The FEDERAL ELECTION COMMISSION (FEC or Commission) is an independent commission established by federal law which has, inter alia, authority to enforce the Federal Election Campaign Act of 1971, and Chapters 95 and 96 of the Internal Revenue Code (which pertain to federal funding for presidential general and primary election campaigns).

Factual Background

24. William Pleasant is a former long-time supporter of Fulani's political work, and long-time collaborator with Newman in cultural, theatrical and writing projects. Shortly

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after the 1992 election, Pleasant openly broke off his working relationships with Fulani and Newman, and launched a campaign seeking to convince Fulani and others to break off their relationships with Newman.

25. As part of this political campaign, Pleasant has contacted law enforcement authorities and urged them to charge Newman with violations of various laws.

26. Kellie Gasink is a former supporter of Fulani and of Newman. She became an intimate friend of William Pleasant, and broke with Fulani and Newman at about the time Pleasant did. Gasink has assisted Pleasant in his efforts to have law enforcement authorities charge Newman and his associates with illegal activity. Upon information and belief, Pleasant and Gasink instigated an investigation of the 1992 Fulani campaign by the Manhattan District Attorney. Several harassing phone calls from Pleasant to Newman were placed from Gasink's home telephone.

27. Upon information and belief, in support of hers and Pleasant's efforts to cause the Manhattan District Attorney to seek an indictment of Newman, on or about June 10, 1993, Gasink submitted to the Manhattan District Attorney a 5-page single-spaced typed letter containing a litany of accusations against Newman and his associates, and alleging that Fulani's 1992 presidential campaign was not a bona fide election campaign, but was a fraudulent embezzlement scheme of a so-called "cult."

28. On November 5, 1993, the Daily News published a 19-paragraph article (the "Article") reporting a leak from the

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District Attorney's office of an investigation of plaintiffs and the New Alliance Party (NAP) (with which plaintiffs were affiliated), and which identified Pleasant and Gasink as sources of the Article.

29. The Article stated, "The FEC would not comment on whether the agency also is investigating NAP."

30. On or about January 31, 1994, Gasink sent the FEC a set of materials consisting of:

a. An unsworn 1-paragraph letter dated January 31, 1994, signed by her;

b. A copy of an unsworn 5-page letter to the District Attorney dated June 10, 1993, signed by her; and

c. A copy of the Article.

31. Upon information and belief, the sending of the materials to the FEC (which included the reference in the Article to the FEC itself), was an attempt by Pleasant and Gasink to manipulate the Commission into investigating the plaintiffs without Pleasant or Gasink taking any responsibility for making their allegations under oath as required by law. Pleasant did not sign the materials although he, upon information and belief, was an anonymous collaborator in sending in the materials. Gasink signed the 1-paragraph letter and the 5-page letter, but she did not swear to the truth of the allegations in either letter.

32. Gasink's submission to the FEC amounted to two complaints -- the unsworn January 31, 1994 complaint (hereinafter

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the "1-paragraph Complaint"), and the unsworn June 10, 1993 complaint (hereinafter the "5-page Complaint"). The 5-page Complaint specifically requested investigation of its allegations by law enforcement authorities.

33. Under cover letter dated February 8, 1994, the Commission returned these materials to Gasink. The letter notified her that her purported complaint(s) was defective because it was not sworn and notarized. It advised her that she must swear to her allegations before a notary public in order for them to be considered.

34. Gasink purported to re-execute the 1-paragraph Complaint and have it acknowledged under oath before a notary public. Gasink did not re-sign or swear to the 5-page Complaint. The 1-paragraph Complaint does not specifically incorporate by reference the allegations in the 5-page Complaint.

35. After receiving these materials from Gasink, the FEC did not notify Gasink that her 5-page Complaint was still defective, and did not give her a further opportunity to swear to the truth of her 5 pages of allegations. Instead, the Commission treated all elements of the package as a valid complaint and opened up a Matter Under Review (MUR).

Agency Action

36. Complaints are processed by the Enforcement Division of the Office of General Counsel (OGC) of the FEC. OGC

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named as respondents not only the two treasurers[1] of Fulani's committee, but also Fulani and Newman. OGC joined them as respondents and demanded responses from them, even though the 1-paragraph Complaint does not mention either of them.

37. One of plaintiffs' attorneys contacted a representative of the Enforcement Division and pointed out that virtually all of the allegations were in the unsworn 5-page Complaint, and that Newman were not named in the 1-paragraph sworn Complaint. He asked the Division to reconsider its naming of Fulani and Newman as respondents, and to decide not to consider in its inquiry any allegations or any persons who were not implicated in the sworn 1-paragraph Complaint.

38. Shortly thereafter Lois Lerner, Associate General Counsel in charge of the Enforcement Division, communicated through a representative to plaintiffs' counsel that the OGC had reconsidered the scope of its jurisdiction arising from the Gasink materials. It was stated that the Enforcement Division was considering all of the materials and allegations submitted by Gasink, unsworn as well as sworn. The Enforcement Division's position was that the references to plaintiff Newman in the Article was sufficient to name him as a respondent.

39. On May 6, 1994, plaintiffs filed with the Commission a Motion for Resubmission Of June 10, 1993 Complaint To Complainant For Verification, Or, In The Alternative For

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[1] Committee treasurers are generally held responsible for Committee financial affairs. 2 U.S.C. §432.

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Notification To Complainant That No Further Action Will Be Taken On The Basis Of That Complaint.

40. By letter dated May 24, 1994, the Commission notified plaintiffs that the Commissioners had denied the motion. The letter stated that the action had been taken at a May 18, 1994 meeting of the Commissioners. The meeting was in a closed, confidential session, and the decision not released to the public or entered into any public record. Hence, the first release of the Commission's action to any private party was on or after May 24, 1994.

COUNT ONE

41. The Federal Election Campaign Act, 2 U.S.C. § 437g(a)(1), states in pertinent part that a private

> complaint shall be in writing, signed and sworn to by the person filing such complaint, shall be notarized, and shall be made under penalty of perjury and subject to the provisions of section 1001 of title 18, United States Code.

(emphasis supplied).

42. Regulations promulgated by the Commission to implement Section 437g(a) set forth the elements that are needed in a complaint for it to be sufficient to allow the FEC to take any action with respect to it.

43. 11 C.F.R. § 111.4(b)(2) provides, in part:

> The contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be notarized.

44. 11 C.F.R. § 111.4(c) provides:

> All statements made in a complaint are

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subject to the statutes governing perjury and to 18 U.S.C. 1001. The complaint should differentiate between statements based upon personal knowledge and statements based upon information and belief.

45. 11 C.F.R. § 111.4(d)(1) provides:

(d) The complaint should conform to the following provisions:
(1) It should clearly identify as a respondent each person or entity who is alleged to have committed a violation;

46. The 1-paragraph Complaint in the instant case does not name any person who is alleged to have committed a violation of law; it only names an entity, "the Lenora B. Fulani for President '92 campaign."

47. The failure of the 1-paragraph Complaint to "clearly identify as a respondent each person or entity" must be deemed a deliberate omission by the complainant, since the complainant did identify persons as respondents in her unsworn 5-page Complaint.

48. 11 C.F.R. § 111.4(d)(2) provides:

(2) Statements which are not based upon personal knowledge should be accompanied by an identification of the source of information which gives rise to the complainants belief in the truth of such statements;

49. 11 C.F.R. § 111.4(d)(3) provides:

(3) It [the sworn complaint] should contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction.

50. 11 C.F.R. § 111.4(d)(4) provides:

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> (4) It [the sworn complaint] should be accompanied by any documentation supporting the facts alleged if such documentation is known, or available to, the complainant.

(emphasis supplied)

51. This provision does not authorize the Commission to rely upon "documentation" to expand the scope of its inquiry beyond allegations that are sworn to in a complaint. Documentation may only used to "support the facts alleged" in the sworn complaint.

52. The Article is not "documentation" within the meaning of 11 C.F.R. § 111.4(d)(4). It is not direct evidence of any relevant fact, but merely a repetition of second hand and third hand allegations. The named sources for these unsupported allegations are Gasink and Pleasant. An unsupported newspaper article reporting on statements by a complainant and the complainant's collaborator cannot be considered documentation "supporting the facts alleged" in the complaint. Having unsworn allegations repeated by a newspaper reporter cannot substitute for the penalty of perjury requirement of Section 437g and 11 C.F.R. §111.4; the allegations must be in a signed writing and sworn before a notary public, not merely recited to a newspaper reporter.

53. The 5-page unsworn Complaint is not "documentation" within the meaning of this regulation. It consists of allegations of unlawful conduct written by the complainant herself and is, therefore, a second complaint.

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54. Even if the Article and the 5-page Complaint were "documentation" within the meaning of the regulation, the Commission could not consider them for the purpose of adding allegations to the allegations contained in the 1-paragraph sworn Complaint. To interpret the regulation to allow unsworn documentation to expand the scope of an investigation by adding new charges, would cause the regulation to exceed the Commission's statutory authority for complaint investigation under Section 437g.

55. The Commission's regulations specifically provide that "no action shall be taken" by the Commission on the basis of a complaint that does not meet the above-stated requirements. 11 C.F.R. § 111.5(b).

56. Instead, the Commission is required to send a notice to the complainant, with a copy to the persons identified in the complaint as respondents, stating the complaint is insufficient. Id.

57. At first, the Commission followed proper procedure with respect to the Gasink complaint. It returned the materials to Gasink with a cover letter stating, in part:

> In order to file a legally sufficient complaint, you must swear before a notary that the contents of your complaint are true to the best of your knowledge and the notary must represent as part of the jurat that such swearing occurred . . . . We regret any inconvenience these requirements may case you, but we are not statutorily empowered to proceed with the handling of a compliance action unless all the statutory requirements are fulfilled.

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(emphasis supplied) Letter from FEC to Gasink dated February 8, 1994.

58. Upon receiving the FEC notification, Gasink swore to the truth of her 1-paragraph letter before a notary public but chose not to swear to the truth of her separate 5-page letter.

59. Pursuant to 2 U.S.C. § 437g(a)(1), and pursuant to its own regulations, the Commission at that point had legal authority to take only one of two courses of action:

a. to take "no action . . . on the basis of the complaint" (11 C.F.R. § 111.5(b)) with respect to the 5-page letter; or

b. to send the complainant a second notification stating that the 5-page letter still was insufficient as a complaint unless she swore to the truth of its allegations, and to take no action unless and until the complainant swore to the truth of the allegations contained therein.

60. The Commission exceeded its jurisdiction by deeming a plainly insufficient complaint to be sufficient, and by proceeding to take action with respect to an insufficient complaint.

61. The Commission had no authority to name persons as respondents and to request that they provide information to FEC investigators, including sworn statements, because the persons are accused of wrongdoing in an unsworn complaint.

62. Defendant's actions not only violate the clear language of FECA and the implementing regulations, they also

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subvert the fundamental purpose of the statute. Congress expressly provided that the FEC, as distinct from many other federal agencies with law enforcement responsibilities, would be denied any roving enforcement and investigatory powers. The FEC's severely delimited jurisdiction reduces the opportunities for politically partisan manipulation of federal law enforcement resource in the electoral process.

63. The instant case is a prototypical instance of the manipulation of federal law enforcement resources for political purposes. The complainant is a person with a self-proclaimed political vendetta against the respondents.

a. First, she went to the Manhattan District Attorney and instigated an investigation of the plaintiffs. She gave the District Attorney the 5-page unsworn letter.

b. Second, she and her collaborator, Pleasant, brought their charges to a newspaper reporter. The newspaper reporter communicated with the District Attorney and with the FEC, asking whether or not they were investigating these charges. According to the Article, a source in the DA's office leaked the information that an investigation was pending. The FEC would neither confirm nor deny.

c. More than half a year after going to the DA, Gasink filed a complaint with the FEC. At that time Gasink was, upon information and belief, a law student and an employee of the Bronx District Attorney, and was familiar with the differences between sworn and unsworn statements. Yet she chose initially to

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submit two unsworn letters to the FEC, one of them being a copy of the same letter she had given to the Manhattan D.A. When the FEC initially rejected the two unsworn letters, she then made a distinction between her 1-paragraph letter, to which she swore, and her 5-page letter which she resubmitted unsworn.

64. The statute and regulations had their intended effect of putting Gasink in the position of putting herself at risk of criminal liability for perjury if she submitted false allegations in a complaint. The legal consequence of her refusal to swear to the truth of the 5-page letter is to defeat any FEC jurisdiction over the allegations contained in the 5-page letter.

65. Because the FEC has disregarded this legal consequence, Gasink has succeeded through her contacts with the DA, the press and the FEC, in manipulating the Commission into bringing to bear its resources against the plaintiffs in an enforcement matter.

66. The FEC's violation of the statute and regulations in this case sets a precedent that opens the door for complainants regularly to file bifurcated complaint documents in order to activate the FEC enforcement machinery against a political enemy while attempting to remain immune to prosecution for perjury. The FEC's practice allows a person to file a one sentence sworn letter accusing one person of wrongdoing, and to enclose another letter by the complainant, unsworn, which goes on for hundreds of lines making false allegations against numerous other persons, and causing the FEC to request responses from all

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of the persons named in both letters to all of the allegations set forth in the unsworn letter.

67. Pursuant to 28 U.S.C. §§ 2201-02, plaintiffs are entitled to a declaratory judgment that defendant has violated 2 U.S.C. § 437g and 11 C.F.R. §§ 111.3 - 111.5.

68. Pursuant to 28 U.S.C. § 1361, the federal Mandamus Act, plaintiffs are entitled to an injunction restraining defendant from acting beyond its jurisdiction in treating the 5-page Complaint as a valid complaint and in considering the allegations in the Article; from abusing their discretion; and from violating plaintiffs' constitutional rights. Defendant has a clear duty under FECA and the Regulations to take no action based upon the unsworn 5-page Complaint; plaintiffs have exhausted their remedies in the administrative process by making a motion to the full Commission, but has voted to continue to act in excess of its statutory jurisdiction.

69. Pursuant to the Administrative Procedure Act, 5 U.S.C. § 701 et seq., plaintiffs are entitled to judicial review of the final agency action denying plaintiffs' motion. The Commission's action denying the motion is a final decision of the Commissioners regarding the scope of the agency's jurisdiction to investigate allegations in the Gasink complaint materials. Plaintiffs are aggrieved by this final agency action because regardless of whether or not the Commission initiates a full investigation, the Commission's enforcement machinery will have been used to investigate the First Amendment activities of the

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plaintiffs and their associates. In the First Amendment area, as contrasted with commercial matters, government investigation of political activity is harm per se, and must be justified by a compelling state interest.

70. Plaintiffs are entitled to relief under the APA because the FEC's actions are:

a. arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law;
b. contrary to constitutional right;
c. in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and
d. without observance of procedure required by law.

5 U.S.C. § 706.

COUNT TWO

71. Plaintiffs repeat and reallege each and every allegation of paragraphs 1-70 as if fully set forth herein.

72. Law enforcement investigations of First Amendment protected activity and associations, and especially participation in the electoral process, infringe upon First Amendment rights unless they are justified by a threshold of evidence commensurate with the investigative methods and scope.

73. 2 U.S.C. § 437g(a)(1) is facially constitutional. The initial threshold for FEC complaint investigation enacted by Congress satisfies the First Amendment by requiring that a complainant swear to the truthfulness of her allegations before the agency even opens up an MUR and requests an answer from the respondents with respect to such allegations.

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74. However, as applied by the Commission to the plaintiffs, § 437g(a)(1) is unconstitutional.

75. The defendant has eliminated the penalties of perjury requirement for acting on a complaint by pursuing an MUR inquiry into the allegations set forth in the 5-page unsworn Complaint, and in the Article; by naming Fulani and Newman as respondents even though neither of them is mentioned in the 1-paragraph Complaint; and by naming Massad as a respondent even though the general election committee of which she is treasurer is not implicated in the 1-paragraph Complaint.

76. Congress was sufficiently concerned about the constitutionality of FECA, that it created an extraordinary remedy for expedited judicial review of challenges to the constitutionality of its provisions. Pursuant to 5 U.S.C. § 437h, a party may commence a constitutional review proceeding in district court; the district court takes evidence and then certifies the record to the Court of Appeals which sits en banc to decide the constitutional question. This remedy is available for "as applied" challenges as well as facial challenges.

77. Alternatively, plaintiffs may present their constitutional claims for full adjudication in the district court.

Harm

78. Plaintiffs have suffered harm as a result of past conduct by the defendant that violated their statutory and constitutional rights.

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79. Plaintiffs are suffering harm as a result of present conduct of the defendant that violates their statutory and constitutional rights.

80. Plaintiffs have a reasonable expectation that defendant's threatened future conduct will deprive them of their statutory and constitutional rights.

81. Investigation of plaintiffs' First Amendment activities is harmful to them regardless of whether or not the Commission eventually charges any of them with violations of law.

82. The mere fact that the Commission has named Fulani's campaign manager as a respondent to an unsworn complaint letter, has asserted jurisdiction over a litany of unsworn accusations against her campaign manager, and has requested that her campaign manager respond to those allegations in his own sworn statement, will chill persons from associating with Fulani, and, in particular, will deter persons from serving in responsible positions in Fulani campaigns.

83. The plaintiffs are forced to expend time, resources and energy to respond to allegations that are not even within the jurisdiction of the defendant. This impairs their exercise of their First Amendment rights and chills people from associating with them.

84. The FEC has already completed an exhaustive and detailed audit of the finances of the Fulani for President committees which failed to disclose evidence of any of the charges contained in the unsworn complaint. Plaintiffs expended

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considerable efforts cooperating with the audit. Plaintiffs cannot lawfully be required to use additional resource to respond to unsworn charges made by private parties.

85. The unsworn 5-page Complaint seeks criminal prosecution of the plaintiffs under state and local laws over which the FEC has no jurisdiction. By broadening its enforcement proceeding to consider the unsworn allegations of the 5-page complaint, the Commission is using its resources to gather information that Gasink, Pleasant, and others may seek to utilize to instigate a local or state criminal prosecution.

86. The Commission's actions in this case of opening up an inquiry into a multitude of unsworn allegations and adding allegations and respondent(s) to its inquiry based on a newspaper article has a chilling effect upon electoral activity by plaintiffs and persons who do or who might in the future associate with them.

87. The Commission's actions impair and will impair plaintiffs' exercise of their First Amendment rights.

88. The Commission's unlawful investigatory activities have irrevocably tainted its ability to conduct a fair and impartial investigation limited only to the 1-paragraph Complaint.

89. No prior request has been made to this or to any other court for the relief requested herein.

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Jury Trial Demand

90. Plaintiffs request a trial by jury to the extent available by applicable law.

WHEREFORE, plaintiffs respectfully demand judgment against the defendant as follows:

(1) A temporary restraining order and preliminary injunction ordering the defendant:

a. to stay all proceedings in MUR 3938 pending the final judgment of this Court; or, in the alternative,

b. to cease any enforcement or investigative proceedings arising from or traceable in any way, directly or indirectly, from allegations and information contained in the unsworn 5-page letter or in the Article filed in MUR 3938 by Kellie Gasink; and

(2) A judgment declaring that the defendant has violated 2 U.S.C. § 427g(a)(1) and 11 C.F.R. §§ 111.4-111.5 by proceeding with MUR proceedings on the basis of the unsworn 5-page letter and on the basis of the Article; and

(3) A judgment by this Court, or by the Court of Appeals sitting <u>en banc</u> through certification under 2 U.S.C. § 427h, declaring that as applied to plaintiffs by defendant, 2 U.S.C. § 427g(a)(1) is unconstitutional;

(4) A judgment declaring that defendant has violated plaintiffs' rights under the First Amendment;

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(5) A permanent injunction

(a) barring defendant from continuing any enforcement or investigative proceedings based directly or indirectly upon allegations or information contained in the unsworn 5-page letter or in the Article;

(b) barring defendant from making any use of any information or materials generated in connection with its review and investigation heretofore;

(c) directing defendant to dismiss MUR 3938 in its entirety; and

(d) prohibiting the defendant from disclosing information or materials obtained in the course of MUR 3938 to the public or to governmental officials; and requiring defendant to disclose all such information to the plaintiffs;

(6) awarding plaintiffs the costs and disbursement of this action, including reasonable attorney's fees pursuant to 28 U.S.C. 2412;

(7) awarding plaintiffs such other and further relief as the Court may deem just and proper.

Dated: New York, New York
June 17, 1994

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Lenora B. Fulani for President

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JUL 5 9 46 AM '94

June 29, 1994

MUR 3938

Federal Elections Commission
999 E. Street NW
Washington, D.C. 20463
Attn: Ms. Mary Taksar

To Whom It May Concern:

I, Kellie Gasink, do hereby swear and subscribe that the allegations contained in my June 10, 1993 letter to the Manhattan District Attorney's Office are true and accurate.

Signed,

Kellie Gasink

Kellie Gasink

STATE OF NEW YORK)
)ss.
County of Bronx

Grace Ievoli

GRACE IEVOLI
Notary Public, State of New York
03-4980588
Qualified in Bronx County
Commission Expires April 30, 1995

Sworn to Before me this
29th Day of June, 1994

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ARTHUR BLOCK
ATTORNEY AT LAW
72 Spring Street, Suite 1201, New York, NY 10012 (212) 966-0404

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
AUG 15 10 20 AM '94

August 12, 1994

VIA FAX AND FIRST CLASS MAIL

Lawrence Noble
General Counsel
Federal Election Commission
999 E St. N.W.
Washington, DC 20463

Re: Lenora B. Fulani for President

Dear Mr. Noble:

Your letter to the Lenora B. Fulani Committee dated July 29, 1994, stated that the Commission had authorized the Office of General Counsel to conduct an inquiry into the Committee under 26 U.S.C. § 9039(b) and 11 C.F.R. § 9039.3. You concluded the letter by referring any questions we might have to Associate General Counsel Kim Bright-Coleman.

Subsequently, I had two telephone conversations with Ms. Bright-Coleman about this matter, in which she provided some information about the genesis of, and purported justification for, the opening of this rarely used investigative procedure at this unusual point in the audit process. She characterized the Commission's sudden decision to conduct an investigation of the campaign within the audit process, as an indication that the Commission had decided that the allegations made against the Committee in MUR 3938 did not warrant the use of Commission resources in the enforcement process.

However, when asked whether this meant that the Commission would be dismissing the complaint in MUR 3938 she said she did not know, but would try to find out. Later, OGC attorney Rhonda Vosdingh told me that your office would be recommending to the Commission that MUR 3938 be "held in abeyance."

I consulted with my clients about my discussions with Ms. Bright-Coleman, and then tried to contact her to continue our dialogue, but was informed that she is now on leave. I am writing to convey my clients' initial response to your office's characterization of these developments.

My clients were not persuaded that the Commission's opening of an investigation in the audit process is a narrowing, rather than an expansion, of the Commission's investigative

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activity directed at them. They raised with me concerns such as these:

1. Doesn't the sudden opening of the audit inquiry amount to a de facto investigation of MUR 3938 within the audit process, rather than within the enforcement process of 2 U.S.C. § 437g? By holding the MUR "in abeyance" the Commission would simply be keeping its options open to investigate the Committee through whichever procedure was most convenient for your office and the Commission at any particular point in time. You would be keeping open the option of pursuing the MUR at some future time, or using the fruits of your audit inquiry to frame a new MUR. Aren't my clients being whipsawed between the audit and the MUR procedures?

2. Doesn't the shift from § 437g to § 3039 permit your office to evade and nullify the due process protections that Congress provided for in § 437g? To begin with, the Commission is now commencing an investigation of allegations made in the MUR without making a finding of "reason to believe," as required by law in the § 437g process.

3. On July 8, 1994, your office issued a memorandum recommending the adoption of the repayment determination in the final audit report. That same day the Washington City Paper published a political attack article against my clients that was principally based upon the allegations in MUR 3938, a copy of which the complainant, in violation of federal law, had given to the paper.[1] Wasn't the Commission's decision not to adopt the repayment determination and its decision to open an inquiry, highly politicized? How can my clients be assured of the fairness, impartiality and integrity of a politicized enforcement and investigative process?

4. Was the opening of a second investigation a punitive and vindictive response by the Commission to my clients' refusal to dismiss their pending lawsuit against the Commission in which

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[1] MUR 3938 had been in the Commission's files for six months, and was the subject of a federal lawsuit. The publication of the attack article was the apparent cause of the Commission's sudden decision to reject the adoption of the repayment determination and to open an investigation in the audit process based on the repetition of the MUR complaint's allegations in a mass circulation newspaper.

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ARTHUR BLOCK
ATTORNEY AT LAW

they allege illegal conduct by the Commission in its handling of MUR 3938?

In light of these serious concerns, my clients have asked me, and my co-counsels, to explore the possible legal avenues to protect their rights. At the same time, they are eager to hear your response to these concerns, and to see if by word and action the Commission can provide assurances of the legality and impartiality of its investigative and enforcement decisions, and thereby resolve their concerns.

I hope to hear from you in the near future.

Very truly yours,

Arthur R. Block

Arthur R. Block

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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-1593 September Term, 1994

Lenora B. Fulani, For President Committee; Lenora B. Fulani,

Petitioners

v.

Federal Election Commission,

Respondent

United States Court of Appeals
For the District of Columbia Circuit
FILED FEB 09 1995
RON GARVIN
CLERK

BEFORE: Edwards, Chief Judge; Silberman and Buckley, Circuit Judges

ORDER

Upon consideration of the motion to dismiss, the opposition thereto and the reply; and the procedural motion regarding record and further motions, it is

ORDERED that the motion to dismiss be granted. See Carter/Mondale Presidential Comm., Inc. v. FEC, 711 F.2d 279, 284-85 (D.C. Cir. 1983) (review under 26 U.S.C. § 9041 limited to determinations constituting final agency action). It is

FURTHER ORDERED that the procedural motion regarding record and further motions be dismissed as moot. The Clerk is directed to return the attachment to the motion to dismiss to respondent to ensure continued confidentiality.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 41.

Per Curiam

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RECEIVED
FEDERAL ELECTION
COMMISSION
ADMINISTRATIVE DIVISION

SEP 26 9 46 AM '94

Bette-Jean M. Cohen
3150 Rochambeau Avenue #D41
Bronx, NY 10467
D.O. B.: March 4, 1953

SEP 26 10 07 AM '94
RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

September 22, 1994

FEC
Office of General Counsel
999 E Street N.W.
Washington, DC 20463

Attn: Alva Smith

MUR 3938

Dear Ms. Smith:

I am writing to share information with you which is relevent to a complaint filed with your office by Ms. Kelly Gasink against the New Alliance Party. I was named in Ms. Gasink's complaint (under the name of B.J. Lee which was my name at that time, before I got married) as one of a number of people who had allegedly received payments by the New Alliance Party for work done on their political campaign during 1990-91, I believe..

I would like to state clearly that I have never been paid by cheque(s) by the New Alliance Party in the name of B.J. Lee, or for that matter, in the name of Bette-Jean Lee. In the complaint I understand it disclosed payments by cheques in an amount totalling over $1,000.00. I was also not owed any monies by the New Alliance Party for any services rendered or debt incurred.

After the complaint was filed by Ms. Gasink I was contacted by attorney Harry Kresky regarding the cheques. Mr. Kresky met with me in person, showed me three original cheques from the New Alliance Party which were made payable to "B.J. Lee". All three cheques were signed on the back with "B.J. Lee". Two were then endorsed by a second person, one being endorsed by Jini Berman and the second being endorsed by Francine Miller. The third was not double endorsed. I did not sign any of those three cheques. I never received or saw those cheques until shown them by Mr. Kresky. I did not nor do I now sign my name "B.J. Lee" as those are only my initials, not my legal full name.

I was a volunteer with the New Alliance Party at that time and had been since about 1983-84. I worked on Dr. Fulani's campaigns. In 1992 or 1993 I was paid by cheques by the New Alliance Party for work on the campaigns, but in the name of Bette-Jean Cohen. I know both Jini Berman and Francine Miller. I did not at the time give them the authority or permission to cash cheques in my name nor do I now condone them doing that. I did not receive the monies from those cheques. I was not owed monies for any work done or for any expenses or debts incurred for the New Alliance Party or Dr. Fulani at that time.

I hope this will be helpful in your investigation into this matter. If you need further information or have any further questions, please feel free to call me at 212-473-1858, Monday to Friday, 8:30 a.m. to 4:30 p.m.

Respectfully,

Bette-Jean Cohen

Bette-Jean M. Cohen

bjc

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 17, 1994

Francine Miller, Treasurer
Lenora B. Fulani for President Committee
200 West 72nd Street #30
New York, NY 10023

RE: MUR 3938

Dear Ms. Miller:

You requested that the Federal Election Commission permit the Lenora B. Fulani for President Committee ("Committee") to terminate pursuant to 2 U.S.C. § 433(d) and Section 102.3 of the Commission's Regulations. Because of the ongoing enforcement matter involving your Committee, this request has been denied. Therefore, you are reminded that the Committee must continue to file all the required reports with the Commission until such time as the enforcement matter has been closed as to the Committee.

If you have any questions, please contact Alva Smith at (202) 219-3400.

Sincerely,

Mary L. Taksar

Mary L. Taksar
Attorney

cc: Reports Analysis Division

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FEDERAL ELECTION
COMMISSION
SECRETARIAT

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

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 3938
DATE COMPLAINT FILED: February 28, 1994
DATE OF NOTIFICATION: March 7, 1994
DATE ACTIVATED: August 30, 1995
STAFF MEMBER: Craig D. Reffner

COMPLAINANT: Kellie Gasink

RESPONDENTS: Dr. Lenora B. Fulani
Lenora B. Fulani for President, and
Francine Miller, as treasurer
Fred Newman
Rachel Massad

RELEVANT STATUTES: 2 U.S.C. § 434
11 C.F.R. § 9034.5(b)

INTERNAL REPORTS CHECKED: Disclosure Reports
Audit Materials

FEDERAL AGENCIES CHECKED: Department of Justice

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I. GENERATION OF MATTER

This matter was generated by a complaint filed by Kellie Gasink (the "Complainant"), a former volunteer in Dr. Lenora B. Fulani's 1992 campaign for nomination as a Presidential candidate. According to Ms. Gasink, Fred Newman, Dr. Fulani's campaign manager, and Francine Miller, the treasurer of Dr. Fulani's authorized campaign committee, Lenora B. Fulani for President (the "Committee"), embezzled funds from the Committee. Their alleged embezzlement scheme involved overpaying various organizations that Mr. Newman controlled as well as having Ms. Miller falsify the Committee's disclosure reports to show that funds had been

issued to certain individuals who, in fact, never received any funds from the Committee. A response has been received. Attachment.

II. BACKGROUND

Dr. Lenora B. Fulani sought to be nominated as a Presidential candidate for the Democratic Party, the New Alliance Party, and several other third parties during the 1992 Presidential elections. Dr. Fulani became eligible to receive matching funds on October 31, 1991. She became ineligible to receive matching funds on August 20, 1992. The Committee received a total of $2,013,323 in funds under the Presidential Primary Matching Payment Account Act ("Primary Account Act"). This included funds received for the Committee's obligations and winding down costs, which were incurred after August 20, 1992. The Committee disclosed making $4,088,046 in expenditures between March 6, 1991 and October 31, 1992, in connection with Dr. Fulani's campaign.

Pursuant to 26 U.S.C. § 9038(a) and 11 C.F.R. § 9038.1(a)(1), the Commission conducted an audit and examination of the Committee's receipts, disbursements, and qualified campaign expenses. On April 21, 1994, the Commission approved the Final Audit Report on the Committee's financial activities. At that time, the Commission also made an initial determination that the Committee must repay $1,394 to the United States Treasury. This reflected the cost of lost money orders which were considered non-qualified campaign expenditures.[1]

[1] The Committee did not contest this initial repayment determination and has, in fact, repaid $1,394 to the United States Treasury.

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In February 1994, however, after the audit fieldwork had been completed and before the Commission issued the Final Audit Report for the Committee, the Commission received Ms. Gasink's complaint as well as information from the Department of Justice that raised questions about the legitimacy of the Committee's payments to certain vendors and individuals. Based upon this information, and after discussions between staff of this Office and the Audit Division, the Commission, on July 26, 1994, determined to open an investigation into the Committee's use of public funds pursuant to 26 U.S.C. § 9039(b).

III. COMPLAINT AND RESPONSE

In her complaint, Ms. Gasink identified 13 organizations, including New Alliance Productions, which Mr. Newman purportedly used to embezzle funds from the Committee. According to Ms. Gasink, these organizations "delivered almost no goods and services to the" Committee, yet "the expenses that were billed to the campaign . . . were double billed or were fabricated." Ms. Gasink further alleges that Mr. Newman diverted campaign funds by having the Committee falsify disbursements to individuals for salaries and other staff reimbursements. The complainant identifies seven individuals, including herself, whom the Committee disclosed as payees, but who actually "never received any money from the campaign."[3]

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[2]

[3] The complaint in this matter included a letter, dated January 31, 1994, to the Commission along with two attachments: a letter dated June 10, 1993 from the complainant to the United States District Attorney's Office for the Southern District of New York and a copy of a November 5, 1993 news article from the Daily News entitled *Fringe*

In response, counsel, arguing that the Committee did not overpay any of its vendors, included an affidavit from Francine Miller, the Committee's treasurer, which, according to counsel, describes the various services performed by vendors in connection with Dr. Fulani's campaign. Attachment at 5 and 10-19 (affidavit of Miller). Counsel also produced affidavits from Dorris Kelly and Wilton Duckworth, who are two of the seven payees who allegedly did not receive the funds that the Committee reported dispersing to them. In her affidavit, Dorris Kelly states that she received $1,475 for clerical services she performed for the Committee and in his affidavit, Wilton Duckworth states that he cannot recall exactly how much he received for the services he provided, but he believes it was less than the $1,000 that the Committee allegedly reported dispersing to him. Attachment at 81-87 (affidavit of Kelly) and 88-90 (affidavit of Duckworth).[4]

Party Funds Investigated. Counsel for Respondents challenged the legal adequacy of the complaint on the grounds that it had not been properly sworn to. According to counsel, the complaint included two separate statements: the first was "a fifteen line sworn statement dated January 31, 1994 addressed to the Federal Election Commission and [the second was] an unsworn copy of a six page single spaced letter dated June 10, 1993 addressed to the 'Manhattan District Attorney,' which was referenced in and attached to the January 31, 1994 letter to the Commission. Counsel argued that both of these submissions must be sworn to in order for the Commission to proceed further in this matter and that since the letter to the United States Attorney's Office was not sworn to it could not be considered a proper complaint. The Commission, however, denied this motion as well as counsel's alternative motion to take no further action with respect to the allegations raised in the June 10, 1993 letter to the United States Attorney's Office. Respondents then filed a complaint against the Commission in United States District Court for the Southern District of New York alleging that the Commission violated 2 U.S.C. § 437g as well as plaintiffs' constitutional rights because it had opened an enforcement matter based upon "allegations contained in an unsworn complaint" as well as a newspaper article. *Fulani for President Committee v. Federal Election Comm'n.*, S.D.N.Y. No. 94-Civ-4461 (KTD). However, after the complainant submitted a sworn and notarized statement verifying the statements made in her June 10, 1993 letter to the United States Attorney's Office, the district court dismissed the complaint as moot.

[4] Disclosure reports filed by the Committee confirm that Ms. Kelly actually received a total of $1,475 in disbursements from the Committee, rather than the $1,275 in disbursements that the complainant alleged the Committee disclosed making to her. Similarly, the Committee's disclosure reports confirm that Mr. Duckworth actually received a total of $826.35 instead of the $1,000 in disbursements that the complainant alleged the Committee made to him.

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In the case of the complainant, counsel acknowledges that someone other than Ms. Gasink negotiated her checks and argues that "[t]he question of whether or not [Ms.] Gasink received $500 dollars from the Committee (or the money in the amounts listed in the Committee's filing) turns completely on her credibility." Attachment at 8. Counsel characterizes the complainant as a disgruntled former colleague who is motivated by political disagreement with Respondents. Counsel also argues that the amount of money involved in this matter is insignificant and requests that the Commission exercise its prosecutorial discretion and dismiss the complaint in this matter.[5]

IV. RESULTS OF SECTION 9039(b) INVESTIGATION

On August 3, 1995, the Commission made three initial determinations that required the Committee to repay a total of $612,557.32 to the United States Treasury. These determinations, which were in addition to the earlier determination that the Committee repay $1,394 to the United States Treasury for lost money orders, were based upon the Committee's failure to demonstrate that disbursements to various vendors and individuals were qualified campaign expenses. *See Lenora B. Fulani for President Notice of Initial Repayment Determination*, dated August 3, 1995.

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[5] In support of his request that this matter be dismissed, counsel maintains that the Commission has conducted a thorough audit of the Committee and "found no evidence of funds being diverted or spent for non-permissible purposes, other than a technical finding that receipts for $1,394 worth of money orders were lost, and therefore, they were not a qualified campaign expense." The initial determination that the Committee must repay $1,394 to the United States Treasury, however, was made on April 21, 1994, well before the Commission determined to hold this MUR in abeyance and initiate an inquiry into the Committee's use of public funds. As noted above, *see supra* at 4-6, the Commission has since made a final determination that the Committee must repay a total of $129,316.02 to the United States Treasury. *See Final Repayment Determination for Dr. Lenora Fulani*, dated March 6, 1997. Moreover, that Final Repayment Determination was based upon the Committee's use of public funds to overpay a vendor as well as to make disbursements to individuals which could not be traced. *Id.*

The Committee contested this initial repayment determination and submitted documentation in an effort to show that the disbursements in question were qualified campaign expenses.[6]

Based upon information obtained during the Commission's investigation as well as the documents submitted by the Committee in response to the initial repayment determination, the Commission made a final determination that the Committee must repay $117,269.54 to the United States Treasury. *See Statement of Reasons for the Commission's Final Repayment Determination for Dr. Lenora Fulani*, dated March 6, 1997. The final determination included the repayment of $18,767.99, which reflected the pro rata amount of public funds used to make an overpayment of $43,562.50 to one of the Committee's vendors, New Alliance Productions, Inc. The available evidence showed that the Committee paid New Alliance Productions a total of $75,062.50 between January 13, 1992, and September 8, 1992 for 6,000 copies per week of the *National Alliance* newspaper, a New Alliance Production publication. The Committee, however, was charged $.35 per copy for the *National Alliance* while other purchasers ordering bulk orders of 250 or more were charged only $.15 per copy. Thus, the Committee should have only paid $31,500 for the copies of *National Alliance* that it received. This resulted in an overpayment to New Alliance Productions of $43,562.50 and, under the Primary Account Act, an overpayment is a non-qualified campaign expenditure. *See Id.* at 81-84.

The Commission's final determination also called for the repayment of $73,750.55, which represented the pro rata amount of public funds used to make $171,182.88 in disbursements to individuals that could not be traced. *Id.* at 65-86. Under the Primary Account Act, when a

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[6] The candidate and counsel for the Committee also made an oral presentation before the Commission in support of the Committee's position.

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committee payment cannot be traced, the funds are considered non-qualified campaign expenditures which the committee must repay. *See Robertson v. Federal Election Comm'n.* 45 F.3d 386 (D.C.Cir. 1995) (funds must be "actually received" in order for expenditure to be considered a qualified campaign expense). The evidence here showed that the Committee's treasurer regularly negotiated Committee checks for cash by endorsing the payee's names. She explained that the checks were negotiated in this manner because a number of payees were unable to cash the checks themselves, including payees who did not have bank accounts. Although the Committee's treasurer asserted that the cash was then dispersed to the various payees, the Committee failed to demonstrate that the individuals actually received any funds from the Committee. Moreover, in her deposition, Ms. Gasink stated, under oath, that she never received any of the $450 in funds that the Committee disclosed issuing to her. *See Statement of Reasons for the Commission's Final Repayment Determination for Dr. Lenora Fulani*, dated March 6, 1977, at 65-86.[7]

Lastly, the Commission's final determination called for the repayment of $23,357 in public funds that the Committee received in excess of its entitlement. *See Id.* at 86-87. As noted in the Commission's Final Repayment Determination, candidates who are no longer eligible to receiving matching funds may only receive payments to defray their outstanding obligations that are based upon qualified campaign expenses. 11 C.F.R. 9034.5(b). The NOCO Statement submitted by the Committee, however, included the non-qualified campaign expenses represented

[7] Disclosure reports filed by the Committee show that Ms. Gasink was issued a check for $225 on November 15, 1991 and another check for $225 on November 29, 1991.

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by the portion of the overpayment to New Alliance Productions as well as the disbursements to individuals that could not be traced. Since these transactions should not have been included in a NOCO Statement, the total obligations in the Committee's NOCO Statement were reduced. This resulted in a corresponding $23,357 reduction in the amount of funds that the Committee was entitled to receive under the Primary Account Act. *See Statement of Reasons for the Commission's Final Repayment Determination for Dr. Lenora Fulani*, dated March 6, 1997, at 86-87.

V. FACTUAL AND LEGAL ANALYSIS

A. The Law

Under the Presidential Primary Matching Payment Account Act (the "Primary Account Act"), candidates seeking the nomination for election to President of the United States are eligible to receive public funds from the Presidential Primary Matching Payment Account. 26 U.S.C. § 9037. 11 C.F.R. § 9033. Funds received under the Primary Account Act may only be used to defray qualified campaign expenses, which the Primary Account Act defines as a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value incurred by a candidate, or by his or her authorized committee, in connection with the candidate's campaign for nomination for election. 26 U.S.C. § 9032(9)(A). 11 C.F.R. § 9034.4(a)(1).

Candidates who become ineligible to receive such matching funds may, however, continue to receive funds under the Primary Account Act for the sole purpose of paying their debts and winding down costs. 26 U.S.C. § 9033(c). 11 C.F.R. §§ 9034.4 and 9034.5. Such payments shall be based upon the outstanding obligations and other winding down costs as reported in a

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candidate's Statement of Net Outstanding Campaign Obligations ("NOCO Statement"). 11 C.F.R. § 9034.5. The outstanding obligations must be based upon qualified campaign expenses that are unpaid as of the date that the candidate is no longer eligible to receive public funds. 11 C.F.R. § 9034.5(a)(1) and 9034.5(b). In addition, the total outstanding campaign obligations included in the NOCO shall not include any accounts payable for non-qualified campaign expenses nor any amounts determined or anticipated to be required as a repayment under 11 C.F.R. part 9038. 11 C.F.R. § 9034.5(b). If a candidate's NOCO Statement includes obligations that are actually nonqualified campaign expenses, then this may result in the candidate receiving more public funds that he or she is entitled to receive. 48 Fed. Reg. 5224, 5229 (1983).

Under the Federal Election Campaign Act of 1971, as amended (the "Act"), political committees are required to file accurate reports of their financial activity with the Commission. 2 U.S.C. § 434. In the case of disbursements, committees are required to identify each person who receives expenditures that, in aggregate amount of value, exceed $200 within a calendar year. 2 U.S.C. § 434(b)(5). 11 C.F.R. § 104.3(b). Similarly, in the case of a committee filing a NOCO Statement to receive funds under the Primary Account Act, the Committee must accurately disclose all obligations and other winding down costs. 11 C.F.R. § 9034.5.

B. Analysis

The Commission held this matter in abeyance pending the outcome of its investigation into the Committee's use of public funds under 26 C.F.R. § 9039(b). The Commission has since concluded that investigation and, based upon the available information, it appears that certain violations of the Act and Commission regulations occurred in this matter. Indeed, the available

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information confirms that the Committee did overpay one of its vendors, New Alliance Productions. The evidence showed that the Committee overpaid New Alliance Productions a total of $43,562.50 for copies of *National Alliance* newspaper. *See supra* at 6-7 (*citing Statement of Reasons for the Commission's Final Repayment Determination for Dr. Lenora Fulani*, dated March 6, 1997, at 63-65).

The available information also shows that the Committee disclosed making $171,182.88 in disbursements to individuals, yet the Committee could not conclusively demonstrate that these individuals received any such funds from the Committee. In fact, during the Commission's Section 9039 investigation the Committee's treasurer acknowledged that she regularly negotiated Committee checks for cash by endorsing the payee's name and, in the case of the complainant, counsel has admitted that someone other than Ms. Gasink negotiated the two $225 checks issued to her. Similarly, during the Commission's Section 9039(b) inquiry, this Office received an unsolicited letter from Betty Jean Cohen, who maintains that she did not receive any of the $1,000 in funds that the Committee allegedly disclosed making to her in the name "B.J. Lee." Disclosure reports confirm that the Committee made $1,000 in disbursements to B.J. Lee while no disbursements were reported as having been made to Ms. Cohen.[8]

Lastly, the available information shows that the NOCO Statement filed by the Committee included as outstanding obligations, the $43,562.50 overpayment to New Alliance Productions as well as the $171,182.88 in disbursements to various individuals that could not be traced. These

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[8] The Commission's Final Repayment Determination called for the Committee to repay the pro rata portion of public funds used to make $171,182.88 in disbursements to individuals that could not be traced and which the Committee failed to demonstrate were qualified campaign expenditures. *See Final Repayment Determination for Dr. Lenora Fulani*, dated March 6, 1997.

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various transactions, however, were non-qualified campaign expenditures that the Committee should not have included in its NOCO Statement.

The Act requires that committees file accurate reports of their financial activity with the Commission. 2 U.S.C. § 434. In this matter, the available evidence shows that the Committee inaccurately identified the payees for various disbursements that it made. Furthermore, the Committee could not demonstrate that the individuals it identified as payees actually received the $171,182.88 in disbursements in question. By incorrectly identifying the payees of disbursements, it appears that the Committee violated 2 U.S.C. § 434.

The Commission's regulations further require that the total outstanding campaign obligations included in a NOCO Statement shall not include any accounts payable for non-qualified campaign expenses nor any amounts determined or anticipated to be required as a repayment under 11 C.F.R. part 9038. 11 C.F.R. § 9034.5(b). By including certain non-qualified campaign expenditures in the NOCO Statement that it filed with the Commission, it appears that the Committee inaccurately disclosed its financial activity. Therefore, it appears that the Committee violated 2 U.S.C. § 434 and 11 C.F.R. § 9034.5(b).

C. Conclusion

Based upon the above discussion, this Office recommends that the Commission find reason to believe that Lenora B. Fulani for President and Francine Miller, as treasurer, violated 2 U.S.C. § 434 and 11 C.F.R. § 9034.5(b). In addition, this Office further recommends that the Commission find no reason to believe that Dr. Lenora Fulani, Fred Newman or Rachel Massad violated any provision of the Act or the Primary Account Act based upon the complaint filed in

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MUR 3938. The apparent violations at issue in this matter appear to entail reporting and expenditure requirements that are imposed upon committees rather than individuals. 2 U.S.C. § 434. Under these circumstances, and because these individuals were notified of the complaint in this matter, this Office believes that the recommended course of action with respect to these individuals is appropriate.

Although the Commission could pursue the violations at issue here through the enforcement process, this Office believes that the Commission should exercise its prosecutorial discretion and take no further action in this matter. In light of the decisions in *Federal Election Comm'n. v. Larry Williams*, No. 95-55320, 1996 WL 734772 (9th Cir. (Cal.) December 26, 1996) and *Federal Election Comm'n. v. National Republican Senatorial Comm.*, 877 F.Supp. 15 (D.D.C. 1995), this Office notes that a significant portion of the activity at issue in this matter occurred more than five years ago. *See* 5 U.S.C. § 2462. Given that the activity that is at issue here is beyond the five year statute of limitations found at 5 U.S.C. § 2462, a court may not impose a civil penalty for the apparent violations in this matter.[9]

In addition, this Office notes that the issues raised in the complaint in this matter have been investigated by the Commission in its Section 9039.3 inquiry into the Committee's use of public funds. That inquiry included the issuance of subpoenas for the production of documents by the Committee and its vendors and the depositions of the complainant in this matter as well as the Committee's treasurer and campaign manager. Not only has this investigation provided evidence

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[9] The available information shows that the vast amount of activities concerning the $171,182.88 in disbursements to individuals that could not be traced occurred between November 1991 and March 1992 while the activities related to the $43,562.50 overpayment to New Alliance Productions occurred between January and September 1992.

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which the Commission ultimately relied upon in making its final determination that the Committee repay $117,269.54 to the United States Treasury, but this investigation has become part of the public record. *See Statement of Reasons in support of the Commission's Final Repayment Determination for Dr. Lenora Fulani*, dated January , 1997.[10]

This Office recognizes that the repayment and enforcement processes involve separate statutory schemes with different functions and results. *See Reagan Bush Committee v. Federal Election Commission*, 525 F. Supp. 1330, 1337 (D. D.C. 1981). However, the enforcement efforts needed to ascertain the extent of the reporting violations at issue in this matter would further strain the Commission's limited resources.[12]

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[10] The Committee may file a petition in the United States Court of Appeals for the District of Columbia for judicial review of the Commission's final repayment determination. 26 U.S.C. § 9041.

[12] In order to determine the extent of the reporting violations the Office of General Counsel would be required to examine the Committee's disclosure reports for disbursements totaling $171,182.88. Although we know that the Committee disclosed making disbursements to Ms. Gasink, it remains to be determined whether the Committee actually disclosed making the other disbursements that could not be traced. Indeed, even though there is a high probability that these disbursements were disclosed by the Committee, the fact that they were included on the computer tapes used by the Audit Division does not establish that the Committee actually disclosed each of the disbursements in question.

the Office of the General Counsel recommends that the Commission take no further action in this matter and close the file.

III. RECOMMENDATIONS

1. Reject the request by Leonora B. Fulani for President and Francine Miller, as treasurer, to dismiss the complaint in this matter;

2. Find reason to believe that the Lenora B. Fulani for President Committee and Francine Miller, as treasurer, violated 2 U.S.C. § 434 and 11 C.F.R. § 9034.5(b);

3. Find no reason to believe that Dr. Lenora Fulani, Fred Newman or Rachel Massad violated any provision of the Federal Election Campaign Act of 1971, as amended, or the Presidential Primary Matching Payment Account Act, as amended, based upon the complaint filed in MUR 3938;

4. Take no further action and close the file; and

5. Approve the appropriate letters.

3/7/97
Date

Lawrence M. Noble
General Counsel

Attachments
Response

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Dr. Lenora B. Fulani;	)	MUR 3938
Lenora B. Fulani for President and	)	
Francine Miller as treasurer;	)	
Fred Newman;	)	
Rachel Massad.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on March 13, 1997, the Commission decided by a vote of 5-0 to take the following actions in MUR 3938:

1. Reject the request by Lenora B. Fulani for President and Francine Miller, as treasurer, to dismiss the complaint in this matter.

2. Find reason to believe that the Lenora B. Fulani for President Committee and Francine Miller, as treasurer, violated 2 U.S.C. § 434 and 11 C.F.R. § 9034.5(b).

3. Find no reason to believe that Dr. Lenora Fulani, Fred Newman or Rachel Massad violated any provision of the Federal Election Campaign Act of 1971, as amended, or the Presidential Primary Matching Payment Account Act, as amended, based upon the complaint filed in MUR 3938.

(continued)

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4. Take no further action and close the file.

5. Approve the appropriate letters, as recommended in the General Counsel's Report dated March 7, 1997.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

3-14-97
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat:	Mon.,	Mar. 10, 1997	9:29 a.m.
Circulated to the Commission:	Mon.,	Mar. 10, 1997	4:00 p.m.
Deadline for vote:	Thurs.,	Mar. 13, 1997	4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 7, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kellie Gasink
3150 Rochambeau Avenue
Apartment 41D
Bronx, New York 10467

RE: MUR 3938
Fulani for President and
Francine Miller, as treasurer
Dr. Lenora Fulani
Fred Newman
Rachel Massad

Dear Ms. Gasink:

This is in reference to the complaint you filed with the Federal Election Commission (the "Commission") on February 28, 1994, concerning the above-referenced Respondents.

Based on that complaint, on March 13, 1997, the Commission found that there was reason to believe that Fulani for President and Francine Miller, as treasurer (collectively referred to as the "Committee"), violated 2 U.S.C. § 434, a provision of the Federal Election Campaign Act of 1971, as amended (the "Act"), and 11 C.F.R. § 9034.5(b), a provision of the Commission's regulations. In addition, the Commission found no reason to believe that Dr. Lenora Fulani, Fred Newman or Rachel Massad violated any provision of the Act or the Presidential Primary Matching Payment Account Act, as amended, based upon the complaint that you filed.

After considering the circumstances of this matter, however, the Commission determined to take no further action against the Committee. Accordingly, the file in this matter was closed on March 13, 1997. The General Counsel's Report, which formed a basis for the Commission's decision, is enclosed.

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This matter will become part of the public record within 30 days. The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Craig D. Reffner
Attorney

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 7, 1997

Arthur R. Block, Esq.
14 Wall Street
28th Floor
New York, New York 10005-2101

RE: MUR 3938
Fulani for President and
Francine Miller, as treasurer
Dr. Lenora Fulani
Fred Newman
Rachel Massad

Dear Mr. Block:

On March 13, 1997, the Federal Election Commission (the "Commission") rejected the request by your clients, Lenora B. Fulani for President and Francine Miller, as treasurer (collectively referred to as the "Committee"), to take no further action in the above-referenced matter. Instead, the Commission found reason to believe that the Committee violated 2 U.S.C. § 434, a provision of the Federal Election Campaign Act of 1971, as amended (the "Act"), and 11 C.F.R. § 9034.5(b), a provision of the Commission's regulations. In addition, the Commission found no reason to believe that Dr. Lenora B. Fulani, Fred Newman or Rachel Massad violated any provision of the Act or the Presidential Primary Matching Payment Account Act, as amended, based upon the complaint filed in MUR 3938. A copy of the General Counsel's Report, which formed a basis for the Commission's finding, is attached for your information.

After considering the circumstances of this matter, however, the Commission also determined to take no further action against the Committee. Accordingly, the file in this matter has been closed. The Commission reminds you that failing to correctly identify a payee who receives a disbursement from a political committee is a violation of 2 U.S.C. § 434. The Commission further reminds you that the inclusion of non-qualified campaign expenses on a presidential candidate's Statement of Net Outstanding Campaign Obligations is a violation of 11 C.F.R. § 9034.5(b). Your clients should take steps to ensure that this activity does not occur in the future.

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The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact Craig D. Reffner, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Vice Chairman

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3938

DATE FILMED 5-9-87 CAMERA NO. 4

CAMERAMAN JM II

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Date: 9/3/97

✓ Microfilm

_____ Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 3938.

9704331934

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 14, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kellie Gasink
3401 E. Holland Ave.
Fresno CA 93726

RE: MUR 3938
Fulani for President and
Francine Miller, as treasurer
Dr. Lenora Fulani
Fred Newman
Rachel Massad

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Dear Ms. Gasink:

This is in reference to the complaint you filed with the Federal Election Commission (the "Commission") on February 28, 1994, concerning the above-referenced Respondents.

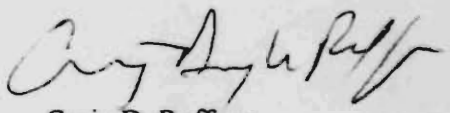
Based on that complaint, on March 13, 1997, the Commission found that there was reason to believe that Fulani for President and Francine Miller, as treasurer (collectively referred to as the "Committee"), violated 2 U.S.C. § 434, a provision of the Federal Election Campaign Act of 1971, as amended (the "Act"), and 11 C.F.R. § 9034.5(b), a provision of the Commission's regulations. In addition, the Commission found no reason to believe that Dr. Lenora Fulani, Fred Newman or Rachel Massad violated any provision of the Act or the Presidential Primary Matching Payment Account Act, as amended, based upon the complaint that you filed.

After considering the circumstances of this matter, however, the Commission determined to take no further action against the Committee. Accordingly, the file in this matter was closed on March 13, 1997. The General Counsel's Report, which formed a basis for the Commission's decision, is enclosed.

This matter will become part of the public record within 30 days. The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact me at (202) 219-3690.

Sincerely,



Craig D. Reffner
Attorney

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 14, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kellie Gasink
1600 Campus Road
Los Angeles CA 90041

RE: MUR 3938
Fulani for President and
Francine Miller, as treasurer
Dr. Lenora Fulani
Fred Newman
Rachel Massad

Dear Ms. Gasink:

This is in reference to the complaint you filed with the Federal Election Commission (the "Commission") on February 28, 1994, concerning the above-referenced Respondents.

Based on that complaint, on March 13, 1997, the Commission found that there was reason to believe that Fulani for President and Francine Miller, as treasurer (collectively referred to as the "Committee"), violated 2 U.S.C. § 434, a provision of the Federal Election Campaign Act of 1971, as amended (the "Act"), and 11 C.F.R. § 9034.5(b), a provision of the Commission's regulations. In addition, the Commission found no reason to believe that Dr. Lenora Fulani, Fred Newman or Rachel Massad violated any provision of the Act or the Presidential Primary Matching Payment Account Act, as amended, based upon the complaint that you filed.

After considering the circumstances of this matter, however, the Commission determined to take no further action against the Committee. Accordingly, the file in this matter was closed on March 13, 1997. The General Counsel's Report, which formed a basis for the Commission's decision, is enclosed.

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This matter will become part of the public record within 30 days. The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Craig D. Reffner
Attorney

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 14, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kellie Gasink
15204 Highway 62
Charlestown IN 47111

RE: MUR 3938
Fulani for President and
Francine Miller, as treasurer
Dr. Lenora Fulani
Fred Newman
Rachel Massad

Dear Ms. Gasink:

This is in reference to the complaint you filed with the Federal Election Commission (the "Commission") on February 28, 1994, concerning the above-referenced Respondents.

Based on that complaint, on March 13, 1997, the Commission found that there was reason to believe that Fulani for President and Francine Miller, as treasurer (collectively referred to as the "Committee"), violated 2 U.S.C. § 434, a provision of the Federal Election Campaign Act of 1971, as amended (the "Act"), and 11 C.F.R. § 9034.5(b), a provision of the Commission's regulations. In addition, the Commission found no reason to believe that Dr. Lenora Fulani, Fred Newman or Rachel Massad violated any provision of the Act or the Presidential Primary Matching Payment Account Act, as amended, based upon the complaint that you filed.

After considering the circumstances of this matter, however, the Commission determined to take no further action against the Committee. Accordingly, the file in this matter was closed on March 13, 1997. The General Counsel's Report, which formed a basis for the Commission's decision, is enclosed.

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This matter will become part of the public record within 30 days. The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Craig D. Reffner
Attorney

Enclosure
General Counsel's Report

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