



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Case Number ADR 019
Source: MUR 5157
Case Name: John Carroll

NEGOTIATED SETTLEMENT

This matter was initiated by a signed, sworn and notarized complaint filed by Mililani B. Trask. Following a review of the record and in an effort to promote compliance with the Federal Election Campaign Act of 1971, as amended ("the FECA"), and to resolve this matter, the Federal Election Commission ("the Commission") entered into negotiations with Brian Yomono, Esq. on behalf of John Carroll ("the candidate"), Carroll 2000 Committee and its treasurer, Brian Yomono, ("the Respondents"). It is understood that this agreement will have no precedential value relative to any other matters coming before the Commission.

Negotiations between the Commission and the Respondents have addressed all the issues raised in this matter. The parties have agreed to resolve the matter according to the following terms.

1. The Commission has entered into this agreement as part of its responsibility for administering the Federal Election Campaign Act and in an effort to promote compliance of the FECA on the part of the Respondents. The Commission's use of ADR procedures is authorized in "The Administrative Dispute Resolution Act of 1996," 5 U.S.C. § 572 and is an extension of 2 U.S.C. § 437g
2. The Respondents have voluntarily entered into this agreement with the Commission.
3. The complaint states that John Carroll used funds from his campaign for the US Senate to purchase radio ads that were designed to incite racial tensions in support of his private litigation against a state agency, the Office of Hawaiian Affairs. The complaint alleges that the candidate's use of campaign funds to support his litigation represented an illegal diversion of campaign resources for his own personal use.
4. Use of campaign funds for personal expenses is prohibited. Personal use is defined as the use of any funds in a campaign account of a candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign. 11 C.F.R. § 113.1(g)
5. Respondents maintain that the complaint is incorrect and motivated by a desire for free publicity. They contend that the funding of radio ads was necessitated by the candidate's need to clarify his position regarding the suit filed to oppose legislation promoted and identified with his opponent. Respondents argue but for the campaign, the candidate had no obligation or need to explain his motives for initiating the lawsuit.

6. Review of documents provided with the complaint attest to the prominence of the lawsuit in the campaign and the related issue of the candidate's motive in filing the suit. Radio ads, that were developed and placed to promote the candidacy of the candidate, were identified as provided and paid for by the candidate's campaign committee. Sworn affidavits provided by counsel attest that all advertisements dealt with campaign issues and contained appropriate disclaimer notice.
7. Based on information cited herein, the ADR Office concludes that the violation alleged in the complaint is unsubstantiated. The Commission concurs by dismissing this matter.
8. The parties agree that if the Respondents fail to comply with the terms of this settlement, the Commission may undertake civil action in the U.S. District Court for the District of Columbia to secure compliance.
9. This agreement will become effective on the date signed by all the parties and approved by the Commission.
10. This Negotiated Settlement constitutes the entire agreement between the parties on ADR 019/MUR 5157 and effectively resolves this matter. No other statement, promise or agreement, either written or oral, made by either party, not included in hereof, shall be enforceable.


FOR THE COMMISSION

Allan D. Silberman,
Director, Alternative Dispute Resolution Office


Allan D. Silberman

12/19/01
Date

FOR THE RESPONDENTS


Brian Yomono, Esq.
Representing John Carroll, Carroll 2000
Committee and Treasurer, Brian Yomono

4/26/01
Date