



Federal Election Commission  
Washington, DC 20463

September 11, 2005

Marc D. Mootchnik, Esq.  
401 Golden Shore, 4<sup>th</sup> floor  
Long Beach, CA 90802

Re: ADR 335 (MUR 5719)

Dear Mr. Mootchnik:

On March 22, 2006, the Federal Election Commission ("FEC" or "Commission") notified California State University of San Marcos Foundation of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with the notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to issue an admonishment, but take no further action against the Respondents. In its memorandum to the Commission, dated August 28, 2006, this office stated:

**Summary of Complaint:** Complainants allege that Francine Busby for Congress and Xavier Martinez, Treasurer, (the "Committee") accepted prohibited corporate contributions from California State University, San Marcos ("CSUSM") and the California State University, San Marcos Foundation (the "Foundation") in violation of 2 U.S.C. § 441b. The candidate's biography appears in "virtually identical" form on both her campaign website, and on the website of California State University San Marcos, where she is apparently employed as an adjunct professor. Complainants contend that the University is a corporation because it "operates with an affiliated private, non-profit tax exempt foundation" that is organized as a corporation under California law. The complaint asserts that the biographies on both websites describe the candidate's accomplishments and qualifications, "while endorsing her candidacy" and serving as "advertisements for [her] campaign." Complainant notes also, that the Committee has not reported any in-kind contributions, receipts or disbursements associated with the CSUSM or the Foundation.

**Respondents' Replies:** The Committee contends that, in response to a request for background information for potential students, the posting of the biography was done by a volunteer, as the candidate is an adjunct professor at CSUSM. The Committee further contends that there was no expenditure made by the Committee to post the biography on the University's website, nor did the biographical statement solicit funds or support.

Respondent CSUSM contends it had not been aware of the political content of the biographical statement. CSUSM goes on to assert that as soon as the administration became aware of it, the materials were removed from the University website, and faculty and staff reminded of the prohibitions on campaign related communications. CSUSM explained that it is a part of the California State University system of higher education, and maintains the website to provide information from professors, which typically includes course information, as well as a professor's biographical information. CSUSM contends that it takes the prohibition on the use of public funds for campaign purposes very seriously, and thus investigated how the material got onto the website. As a result of that investigation, CSUSM determined that having received a statement in response to a request from the Women's Studies program, a student assistant uploaded the biographical information without faculty review.

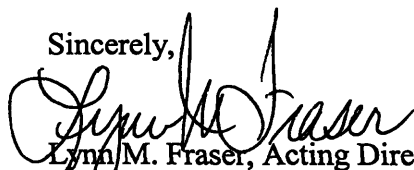
The Foundation contends that it had absolutely no involvement with the activities that were alleged in the complaint. The Foundation goes on to assert that it is a California non-profit public benefit corporation established to support the educational mission of the University, and while it works closely with CSUSM, it has no control over, or responsibility for, CSUSM.

Accordingly, the Commission closed its file in this matter on September 1, 2006.

The FEC is obligated by federal regulations to make a finding to terminate its proceedings public, as well as the basis therefore. 11 C.F.R. § 111.20(b). In addition, the Commission will also place on the record copies of the complaint, correspondence exchanged between Respondent(s) and the Commission, and reports prepared for the Commission by this office to assist in its consideration of this matter. Accordingly, copies of documents relative to this matter will be forwarded shortly to the FEC's Public Information Office.

If you have any questions regarding this matter please be in touch. My telephone number is 202-694-1665.

Sincerely,



Lynn M. Fraser, Acting Director,  
Alternative Dispute Resolution Office

26190265020