

**ARTHUR  
BLOCK**  
ATTORNEY AT LAW

72 Spring Street, Suite 1201, New York, NY 10012 (212) 966-3404 Fax (212) 431-3516

FEB 16 1996  
JAN 16 9 02 AM '96

January 9, 1996

**BY FACSIMILE (202) 219-3923 AND FCM**

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

*Re: Advisory Opinion Request of Lenora B. Fulani, Ph.D.*

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
JAN 16 10 02 AM '96

To the Office of General Counsel:

The undersigned, as authorized agent of Dr. Lenora B. Fulani, submits this request for an advisory opinion pursuant to 2 U.S.C. sec. 437(f) and 11 C.F.R. Part 112. Dr. Fulani is considering running for the Presidency in 1996 as an independent/minor party candidate, and to apply for federal primary matching funds.<sup>1</sup> The Federal Election Commission's ("Commission") advice in response to this request will be an important factor in making a final decision.

In her contemplated 1996 presidential campaign, Dr. Fulani would hire the same or substantially similar individuals, companies and firms as she did in her 1992 campaign, to provide her campaign's critical core of expertise, advice and services -- strategic and tactical planning, development and articulation of her campaign's message, press relations, advertising, design and production of campaign literature, legal advice and representation, bookkeeping and payroll

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<sup>1</sup> Dr. Fulani was a candidate for the office of President of the United States in 1988 and 1992. She qualified for approximately \$1 million in presidential primary matching funds in 1988, and \$2 million in 1992. She has received more federal government campaign aid than any other independent/minor party presidential candidate in the history of the Presidential Primary Matching Payment Account Act. In 1988, she became the first African American, and the first woman, to be on the ballot in every state. In 1992, she was on the ballot in 40 jurisdictions.

In the 1996 election campaign, there now is significant activity in the independent/minor party sector. As a candidate in 1996, it is contemplated that Dr. Fulani would compete for the nomination of the party(s) formed and being formed under the name "Reform Party," the nomination of the Peace and Freedom Party, which has ballot status in California, as well as pursuing various other options for competing for minor party nominations and independent candidate ballot access. Dr. Fulani would apply for federal primary matching funds.

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services, managing ballot access drives, etc. After the 1992 election, the Commission preliminarily determined (Notice of Initial Repayment Determination adopted on August 3, 1995)<sup>2</sup> that every dollar that she paid to this group of vendors would be deemed a non-qualified campaign expense because the vendors were owned or managed by individuals who were her long time political associates. She needs to know whether she can hire these same or similar vendors for her 1996 campaign without having her payments to those vendors disallowed by the Commission because of her associational relationships with these vendors.

The legal construct on which the Commission based its initial repayment determination adopted on August 3, 1995,<sup>3</sup> was that Dr. Fulani's relationships with the vendors was not at "arms length." To our knowledge, the Commission, has not publically defined "arms length" or identified a statute, regulation, or judicial decision that authorizes it to apply that term to disallow payments to vendors. The Commission's definition and operational use of "arms length" is further obscured by the fact that the Commission based its finding regarding the Fulani committee finances on that construct even though the final audit inquiry report issued by its Office of General Counsel did not identify a single dollar of expenditure that was made for work that was not actually performed, for work performed but billed at commercially unreasonable rates, for work that was not in furtherance of the campaign, etc. The entire disallowance of approximately a million dollars of campaign expenses appears to be based on the existence of relationships that allegedly were not at "arms length."

This leaves Dr. Fulani with no legal statement by the Commission as whether or not its interpretation of federal law permits any circumstances at all under which she can hire these or

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<sup>2</sup> Dr. Fulani is contesting this initial repayment determination in the Commission's internal administrative review process, and no final determination has been rendered.

<sup>3</sup> The August 3, 1995 notice was the second "initial repayment determination" adopted by the Commission. The first initial repayment determination for the 1992 Fulani campaign is in the Final Audit Report issued on April 21, 1995, which found that the candidate should repay \$1,394 of the approximately \$2 million in matching funds. The first initial repayment determination was not contested by Dr. Fulani (and she paid it) and therefore it became the final repayment determination by operation of law 30 days later. 11 C.F.R. sec. 9038.2(c)(1). Sixteen months later the Commission purported to issue a second initial repayment determination finding that she had to repay \$612,557.32 of her matching funds. Dr. Fulani's position is that the Commission has no authority under 26 U.S.C. sec. 9038 to adopt a second "final" repayment determination and any agency regulation that might be construed otherwise is contrary to the statute.

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similarly situated vendors in her 1996 campaign and have the Commission recognize her payments to them as "qualified campaign expenses."

There is a second reason why Dr. Fulani needs an advisory opinion on the question of Commission's use of "arms length." If she does not run for president, Dr. Fulani will seek to enter into a coalitional arrangement in which she supports another candidate.<sup>4</sup> A critical resource that Dr. Fulani brings to the bargaining table is her proven ability to run a presidential campaign that can organize ballot access petitioning drives across the country, qualify for federal primary matching funds, carry out grass roots fundraising on a large scale, produce and distribute high quality campaign literature with a clearly defined message, communicate with news organizations around the country, define campaign themes and develop campaign tactics suitable for a pro-democracy, multiracial, independent/minor party presidential candidacy, and provide legal support to all of these operations. In order to accomplish these tasks, Dr. Fulani depends upon the loyalty, skills and support of the very persons whose relationship to her and to vendors was cited by the Commission as the grounds for disallowing about \$1 million in expenses.

In this context, the Commission's now undefined use of the construct "arms length" leaves uncertainty as to how the Commission would view the relationship between Fulani's associates and a 1996 presidential campaign in which she is significantly involved, but someone else is the actual candidate. Would the Commission deem the relationship between the other candidate and the vendors as not at "arms length" and find that payments to those vendors are not qualified campaign expenses?

The Commission's preliminary findings with regard to Dr. Fulani's 1992 hiring of these political associates and their businesses creates a chill, stigmatization and uncertainty with respect to the use of these resources in 1996. For example, gaining access to the statewide ballot in New York is a formidable obstacle.<sup>5</sup> Dr. Fulani can virtually assure an independent or minor party

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<sup>4</sup> For several months already, Dr. Fulani has engaged in planning, negotiations and joint operations with political leaders and political organizations regarding third party formation, third party/independent candidate ballot access, and third party/independent candidacies. For example, at Dr. Fulani's request, close political associates of hers have participated in the California and Ohio petitioning drives to gain ballot status for the Reform Party in each of those states.

<sup>5</sup> Only one Republican presidential primary candidate has even attempted to place his name on the ballot in every congressional district in New York State -- Malcom Forbes, who reportedly spent \$1 million from his personal fortune for the petitioning drive. Patrick Buchanan has attempted to gain access in about half of the districts. The other active national candidates

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candidate that her political associates can mount a petitioning operation with legal back-up that will get him or her on the New York State ballot.<sup>6</sup> This enhances Dr. Fulani's role in giving shape to a 1996 independent/minor party candidacy and/or coalition. However, a candidate who receives federal primary matching funds and who is dealing with Dr. Fulani has to be concerned that if they hire Dr. Fulani's political associates to provide goods and/or services, then the Commission subsequently will rule that these expenses are not qualified campaign expenses and order the candidate to refund the money to the government.

### Questions

For the reasons set forth above, Dr. Fulani articulates the following questions to the Commission:

1. If I purchase goods and/or services for my contemplated 1996 presidential campaign from any of the same vendors whose transactions with my 1992 campaign were deemed not qualified campaign expenses by the Commission in its second notice of initial repayment determination adopted on August 3, 1995, will the 1996 transactions again be deemed not qualified campaign expenses?
  - a. If the Commission's response to the above is other than "yes," then advise me what I must do to structure my transactions with these vendors in 1996 so that my payments to them will not be disallowed.
  
2. If I purchase goods and/or services from my close political associates or companies owned and/or operated by them, will those transactions be not at "arms length"?
  - a) What statute, regulation, contractual agreement, or other legal instrument binding upon a candidate who receives matching funds defines "arms length" / "not at arms length"?
  - b) Will the Commission use objective criteria to determine whether a transaction is "arms length"? If yes, what are they?
  - c) Will the Commission use other criteria to determine whether a transaction is "arms length"? If yes, the (i) what are they?, and (ii) what procedures/standards, if any, will be used by

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did not even attempt to get on the New York ballot. It remains to be seen how many district ballots either Forbes or Buchanan will appear on after the completion of the state ballot petition challenge process, which is about to begin.

<sup>6</sup> Dr. Fulani has herself gained access to the New York State ballot in 1982 (Lt. Governor), 1986 (Governor), 1988 (President), 1990 (Governor), 1992 (President), and 1994 (Governor). Her political associates have successfully petitioned to place numerous other candidates on the New York State ballot.

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**the Commission to ensure that the application of the other criteria to my 1996 campaign is not politicized, partisan, discriminatory, biased, arbitrary or capricious?**

- 3. If I purchase goods and/or services in a transaction that the Commission deems to be not at "arms length," is that sufficient for the Commission to deem the expenditure to be not a qualified campaign expense? If it is not sufficient, then what steps, if any, can I take to ensure that the transactions will be deemed qualified campaign expenses notwithstanding that they are not at "arms length"? For example, are there any safe harbor guidelines?**
- 4. If I purchase goods and/or services from my close political associates or companies owned and/or operated by them, these good/services are offered at not more than fair market value, and these good/services are purchased in connection with my campaign, then will these purchases be qualified campaign expenses?**
- 5. If I purchase goods and/or services from my close political associates or companies owned and/or operated by them, then with regard to those transactions and/or those vendors will I be subjected to any requirements with regard to documentation, retention of documentation, record keeping, or reporting that are additional to or different from the requirements applicable to other vendors and transactions? If yes, what are the requirements?**
- 6. If I purchase goods and/or services from my close political associates or companies owned and/or operated by them, then with regard to those transactions and/or those vendors will I be subjected to any requirements that are additional to or different from the requirements applicable to other vendors and transactions with regard to my carrying my burden of proof that the transactions are qualified campaign expenses? If yes, what are the requirements?**
- 7. If I purchase goods and/or services from my close political associates or companies owned and/or operated by them, then solely because of the nature of my pre-existing relationships with the vendors will the vendors be subjected to heightened scrutiny by the Commission, e.g. subpoenaing their books and records including records of non-campaign related transactions, subpoenaing owners and employees of the companies to appear for depositions.**

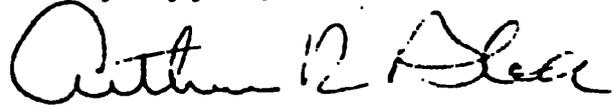
### **Conclusion**

**It is requested that the Commission provide my office with copies of any comments filed with respect to this AOR. It is my understanding that it is Commission practice to provide the requestor with a draft AO prior to its being placed on the Commission's agenda for final action.**

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Thank you for your attention to this request. My client will look forward to receiving an advisory opinion promptly, and in any event within the time frames prescribed by federal law. I am sure the Commission appreciates that time is of the essence in clarifying these questions, given the election calendar.

Very truly yours,

A handwritten signature in black ink, appearing to read "Arthur R. Block". The signature is written in a cursive style with a large initial "A" and "B".

**Arthur R. Block**

**ARB/bp  
cc: Dr. Lenora B. Fulani**



**FEDERAL ELECTION COMMISSION  
Washington, DC 20463**

**January 26, 1996**

**Arthur Block  
Attorney at Law  
72 Spring Street, Suite 1201  
New York, NY 10012**

**Dear Mr. Block:**

**This responds to your letter dated January 9, 1996, on behalf of Dr. Lenora B. Fulani who is a possible candidate for President of the United States in the 1996 election cycle. Your letter, received on January 16, 1996, requests an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Chapter 96 of the Internal Revenue Code ("the Matching Payment Act") to the financing of Dr. Fulani's hypothetical and undeclared presidential campaign.**

**In summary, your letter indicates that Dr. Fulani is considering a 1996 Presidential campaign as an independent or minor party candidate and that she may apply for federal primary matching funds under 26 U.S.C. §9031, *et seq.* In her contemplated 1996 campaign, you state, Dr. Fulani would hire the same or similar individuals, companies and firms that were retained in her 1992 presidential campaign to provide campaign expertise, advice and services, such as strategic and tactical planning, development and articulation of her campaign's message, press relations, advertising, design and production of campaign literature, legal advice and representation, accounting services, and management of ballot access drives.**

**You ask several questions as to whether payments by Dr. Fulani's hypothetical 1996 campaign committee to these same**

service providers would be qualified campaign expenses under the Matching Payment Act. Nearly all of these questions are hypothecated on past activity and transactions in Dr. Fulani's 1992 presidential campaign and represent an attempt to obtain an advisory opinion as to the legal standard that undergirds past Commission decisions with respect to its audit of that campaign.

In addition, you have raised the possibility that if Dr. Fulani herself does not become a 1996 presidential candidate, she may enter into a coalition to support another person's campaign for President. In that hypothetical event, she may offer her political organizing services and those of her associates in the presidential campaign of the other person (not identified), and you ask whether payments by the other campaign to the same vendors she used in her 1992 campaign would be considered as qualified campaign expenses by that candidate.

Our current review of 1996 candidate filings with the Commission indicates that Dr. Fulani has not filed an FEC Form 2, Statement of Candidacy, declaring that she is a 1996 presidential candidate. 11 CFR 100.3, 101.11. In addition, she has not made any submission of signed documentation indicating that she and her authorized campaign committee(s) will comply with the conditions specified in Commission regulations that govern eligibility for Federal matching funds under the Matching Payment Act. See 11 CFR 9033.1(a), 9033.1(b), 9033.2(a) and 9033.2(b).

The Act authorizes the Commission to issue an advisory opinion in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. §437f(a). The request must concern a specific transaction or activity that "the requesting person plans to undertake or is presently undertaking and intends to undertake in the future." 11 CFR 112.1(b). Inquiries presenting only hypothetical questions, or a general question of interpretation, or the activities of third parties who have not joined in making the inquiry, do not qualify as advisory opinion requests. 11 CFR 112.1(b). The regulations also explain that this office shall determine if a request is incomplete or otherwise not qualified as an advisory opinion request. 11 CFR 112.1(d).

At this time your inquiry fails to qualify as an advisory opinion request for several reasons. It is hypothetical in several significant respects. Dr. Fulani has not filed as a 1996 Presidential candidate with the Commission, and she has not submitted any documents indicating that she intends to apply for matching funds. Even if such documents were submitted, it would be necessary for the Commission to determine her current eligibility for matching funds before considering the issue whether a given campaign expenditure would satisfy the definition of qualified campaign expense under 26 U.S.C. §9032(9) and 11 CFR 9032.9.

In addition, the questions posed contemplate a legal interpretation of regulations and statutory provisions that were applied by the Commission in the context of past conduct by Dr. Fulani's 1992 campaign, and not their application to future or ongoing conduct in 1996. The retrospective aspect of the inquiry is even more apparent given the hypothetical status of her own potential 1996 campaign.

The prospect that Dr. Fulani may assist the 1996 campaign of another person also fails to establish her standing for an advisory opinion at this time. Such a person is not named, so it is impossible for him or her to join in the request and provide a complete description of relevant facts. It is also not possible to ascertain whether that person will seek to establish eligibility for Federal matching funds or propose to spend campaign funds by making payments to any of the vendors that were retained by the 1992 Fulani campaign.

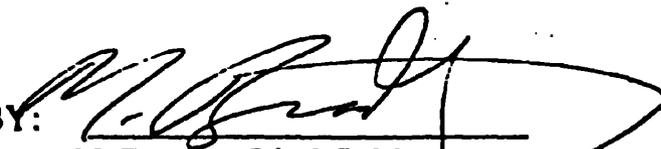
Assuming the foregoing standing defects are resolved in a further submission from you on behalf of Dr. Fulani, it would remain necessary for her to provide a complete description of the future transactions proposed with each vendor, the identification of the vendor, a resume of the other business activities of the vendor, and a description of the basis on which the vendor would calculate its charges to the 1996 campaign and how that basis compares with its charges to similar services to other entities that are not candidates or political committees.

Upon receiving your responses to the foregoing questions and relevant documents, this office and the Commission will give further consideration to

**your inquiry as an advisory opinion request. This letter is being sent by fax, given the stated urgency of your inquiry, with a first class mailing to follow. You may reply by fax if desired, but your signed original letter is also needed for record purposes. The fax number for this office is (202) 219-3923.**

Sincerely,

Lawrence M. Noble  
General Counsel

BY:   
N. Bradley Litchfield  
Associate General Counsel

**ARTHUR  
BLOCK**  
ATTORNEY AT LAW

72 Spring Street, Suite 1201, New York, NY 10012 (212) 966-0404 Fax (212) 431-3516

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
FEB 2 2 39 PM '96

January 30, 1996

**VIA FACSIMILE AND FCM**

N. Bradley Litchfield  
Associate General Counsel  
Federal Election Commission  
999 E Street N.W.  
Washington, DC 20463

*Re: Lenora B. Fulani AOR January 9, 1996*

Dear Mr. Litchfield:

Following up our telephone conversation yesterday I am writing to request that you confirm in writing your oral clarification to me of your letter to me dated January 26, 1996.

The first paragraph on page three of your letter states, in part, that "it would be necessary for the Commission to determine her current eligibility for matching funds . . . ." We discussed the fact that if and when Dr. Fulani is certified as having achieved the threshold for receiving matching funds, expenses she had incurred in furtherance of her campaign prior to the date of certification could be deemed qualified campaign expenses. Accordingly, you clarified that it was the position of the Office of General Counsel that Dr. Fulani would not have to have reached the threshold and be certified for receipt of matching funds before her AOR inquiring about qualified campaign expenses would be deemed a valid request. With regard to this point in your letter, it is sufficient for her to file as a 1996 Presidential candidate with the Commission as specified in the second full paragraph of page two of your letter.

Please confirm this in writing as soon as possible<sup>1</sup>. Thank you.

Very truly yours,



Arthur R. Block

ARB/bp

cc: Dr. Lenora B. Fulani  
2137mllk2

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<sup>1</sup> In requesting this clarification, Dr. Fulani is not conceding that your letter as originally stated or as clarified was either timely or correct.



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

February 1, 1996

Arthur Block.  
Attorney at Law  
72 Spring Street, Suite 1201  
New York, NY 10012

Dear Mr. Block:

This responds to your letter dated January 30, 1996, on behalf of Dr. Lenora B. Fulani that proposes to confirm a phone conversation we had on January 29 regarding my letter dated January 26.

Specifically, we discussed the question of campaign expenses that Dr. Fulani might incur for a 1996 presidential campaign before the date on which she may become certified by the Commission as eligible for Federal matching funds. I agree that it will not be necessary for Dr. Fulani to obtain Commission certification of her 1996 eligibility for matching funds before this office and the Commission further consider an advisory opinion request on her behalf regarding the issue of whether certain pre-certification campaign expenses would be considered as qualified campaign expenses of her 1996 presidential campaign. However, to proceed in the advisory opinion process, it will be necessary for you (and her) to fully respond in all other respects to the questions posed and documents requested in my January 26 letter.

Sincerely,

A handwritten signature in black ink, appearing to read "N. Bradley Litchfield". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

N. Bradley Litchfield  
Associate General Counsel

**ARTHUR  
BLOCK**  
ATTORNEY AT LAW

72 Spring Street, Suite 1201, New York, NY 10012 (212) 966-2424 Fax (212) 431-3516

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

Mar 26 4 10 PM '96

March 25, 1996

**BY FACSIMILE (202) 219-3923 AND FEDERAL EXPRESS**

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

AOR 1996-12

Mar 26 9 57 AM '96

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

*Re: Advisory Opinion Request of Lenora B. Fulani, Ph.D.*

To the Office of General Counsel:

The undersigned, as authorized agent of Dr. Lenora B. Fulani, submits this request for an advisory opinion pursuant to 2 U.S.C. sec. 437(f) and 11 C.F.R. Part 112. Dr. Fulani has filed a statement of candidacy for president in the 1996 election cycle, and a statement of organization has been filed by Lenora B. Fulani for President 96. In addition, Dr. Fulani is about to execute and deliver to the Audit Division a candidate certification and agreement letter.<sup>1</sup> If it has not already been received by the Federal Election Commission, then it should be received shortly.

<sup>1</sup> The filing of these three documents is responsive to the letter of Associate General Counsel N. Bradley Litchfield dated January 26, 1996, in response to a previous request for an advisory opinion by Dr. Fulani dated January 9, 1996. In a follow-up letter dated February 1, 1996, Mr. Litchfield clarified his specifications, in part, as follows:

[I]t will not be necessary for Dr. Fulani to obtain Commission certification of her 1996 eligibility for matching funds before this office and the Commission further consider an advisory opinion request on her behalf regarding the issue of whether certain pre-certification campaign expenses would be considered as qualified campaign expenses of her 1996 presidential campaign.

The undersigned subsequently pointed out to Mr. Litchfield that the candidate agreement and certification letter ordinarily is not submitted until the candidate claims that he or she has reached the matching funds threshold. Mr. Litchfield stated that his office would still require filing of the letter in connection with the submission of this AOR, and proposed a modification of the standard wording of such a letter to reflect that it is being filed prior to meeting threshold, which was done.

While my client believes that she has satisfied all of the stipulations set forth in the OGC's letters of January 26, 1996, and February 1, 1996, for consideration of this AOR, my client does not concede that her original AOR dated January 9, 1996 was not an appropriate request, or that the OGC letter refusing to recognize it as a proper request was issued in a timely manner.

Federal Election Commission

March 25, 1996

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Dr. Fulani will compete for the presidential nomination of the party(s) formed and being formed under the name "Reform Party," as well as pursuing various other options for competing for minor party presidential nominations and independent presidential candidate ballot access. Dr. Fulani presently intends to apply for federal primary matching funds.

In her 1996 presidential campaign, Dr. Fulani plans to hire the same or substantially similar individuals, companies and firms as she did in her 1992 campaign, to provide the critical core of expertise, advice and services for her campaign. She plans to retain these vendors prior to being certified for matching funds to render goods and services prior to said certification (and thereafter), and subsequently would set forth to the Federal Election Commission ("Commission" or "FEC") both the pre-certification and post-certification disbursements as qualified campaign expenses.

After the 1992 election, the Commission preliminarily determined (Notice of Initial Repayment Determination adopted on August 3, 1995) that every dollar that she paid to this group of vendors would be deemed to be a non-qualified campaign expense because the vendors were owned or managed by individuals who were her long time political associates. She needs to know whether she can hire these same or similar vendors for her 1996 campaign without having her payments to these vendors disallowed by the Commission because of her associational relationships with these vendors. Dr. Fulani is contesting this initial repayment determination in the Commission's internal review process, and no final determination has been rendered.

In a declaration dated September 12, 1995, submitted to the Commission in conjunction with the above proceeding, Dr. Fulani described the existence of a core collective to which she and the aforesaid individuals belong. The core collective functions according to the principle that, "all money in the possession of or accruing to those at the core belongs to the collective and is used at the discretion of the members of the collective to pursue shared political goals." The core collective still exists and its members continue to adhere to this principle.<sup>2</sup>

As requested in the letter of Associate General Counsel N. Bradley Litchfield dated January 26, 1996, Dr. Fulani has identified the following transactions and seeks an advisory opinion (and answers to the specific questions set forth below) as to whether or not they would constitute qualified campaign expenditures:

- The hiring of Fred Newman as her campaign manager; Dr. Newman is a member of the core collective; Dr. Newman will be paid as an independent contractor and receive a

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<sup>2</sup> Subsequent references to the "core collective" refer to this body.

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Page 3

monthly retainer of \$10,000 to cover the first 100 hours of work and \$125 per hour for work in excess of 100 hours; this rate is considered commercially reasonable in light of Dr. Newman's experience in managing two presidential campaigns for Dr. Fulani and his expertise in independent political candidacies; these charges are less than Dr. Newman earns for an hour of group therapy and is consistent with what he earns for his work as a consultant to various business, cultural and therapeutic endeavors.

- The retaining of Arthur Block as legal counsel concerning FEC issues and specialized campaign issues such as media access, debates etc.; attorney Block is a member of the core collective; attorney Block will be paid a monthly retainer of \$4,375 to cover 25 hours of work per month, with excess billed at \$200 per hour; this rate is considered commercially reasonable in light of attorney Block's skills, experience and expertise and the going rate for legal services in New York City; attorney Block services a variety of individuals and institutions to which he provides legal advice and representation in litigation or negotiations; his standard rate is \$200 per hour.
- The retaining of Gary Sinawski for legal counsel concerning the rules governing the nominating process of the Reform Party and other independent parties and the relevant state laws and regulations; attorney Sinawski is a member of the core collective; attorney Sinawski will be paid a monthly retainer of \$4,375 to cover 25 hours of work per month, with excess billed at \$200 per hour; this rate is considered commercially reasonable in light of attorney Sinawski's skills, experience and expertise and the going rate for legal services in New York City; attorney Sinawski services a variety of individuals and institutions to which he provides legal advice and representation in litigation or negotiations; he charges these clients between \$125 and \$225 per hour.
- The hiring of a new firm to be organized by several members of the core collective to handle advertising, design of campaign materials and giving expression (in speeches, print, broadcast and graphics) to Dr. Fulani's message and that of her campaign; the firm would be paid a monthly retainer of \$5,000 to cover 60 hours of work and \$100 per hour for work in excess thereof; this is considered commercially reasonable based on what Dr. Fulani paid for similar services in her 1992 campaign and what is the going rate in New York City for such services; the principals of this new firm, Phyllis Goldberg, David Nackman and Jacqueline Salit<sup>3</sup> have performed such services for a variety of clients including the East Side Center for Social Therapy, the Castillo Cultural Center and the

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<sup>3</sup> Ms. Salit is listed as the Treasurer of Lenora B. Fulani for President 96.

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**March 25, 1996**

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**Committee for a Unified Independent Party; for the most part these services were provided on a pro-bono basis with reimbursement only for out of pocket expenses.**

- **The hiring of Ross & Green to do public relations work for Dr. Fulani's campaign to include press and media coordination as well as media and event booking; the principals of Ross & Green, Nancy Ross and Deborah Green, are members of the core collective; the firm would be paid a monthly retainer of \$5,000 to cover 60 hours of work and \$100 per hour for work in excess thereof; this is considered commercially reasonable based on what Dr. Fulani paid for similar services in her 1992 campaign and on what is the going rate in New York City and Washington D.C. for such services; Ross & Green has performed lobbying and public relations services for a variety of clients and has received compensation of between \$50 and \$150 per hours for such services.**
- **The hiring of various persons including members of the core collective as campaign staff to perform the following services for the following salaries: fund raising director at \$50,000 per year pro rated; fund raisers (specializing in telemarketing) at \$30,000 per year pro rated; a treasurer at \$40,000 per year pro rated and one or more assistants at \$25,000 per year pro rated; an operations manager at \$50,000 per year pro rated; a field organizing director at \$50,000 per year pro rated; field organizers at \$30,000 per year pro rated; personal/security aides for the candidate, including a driver at salaries of \$25,000 per year pro rated. These rates are commercially reasonable in light of the skills needed, the intensity of the work, its seasonal nature and the existing job market.**

**For each of the above transactions, Dr. Fulani articulates the following questions to the Commission:**

1. **If the goods and services described above are rendered by the identified vendor, would payment for them on the terms set forth above constitute a qualified campaign expenditure?**
2. **Would a different standard than that applied to other campaigns be used by the Commission to answer the aforesaid question because the vendor or its owners and operators are members of the aforesaid socialist collective?**
3. **If so, what would that standard be?**

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4. Would a different standard than that applied to other campaigns be used by the Commission to answer the aforesaid question because the vendor or its owners and operators are close political associates of the candidate?
5. If so, what would that standard be?
6. Would the candidate<sup>4</sup> be held to a higher standard of proof than that applied to other candidates in establishing that the expenditures were qualified, because the vendor or its owners and operators are members of the aforesaid socialist collective?
7. If so, what would that burden be?
8. Would the candidate be held to a higher standard of proof than that applied to other candidates in establishing that the expenditures were qualified, because the vendor or its owners and operators are close political associates of the candidate?
9. If so, what would that burden be?
10. Would the candidate be held to more stringent documentation requirements than that applied to other candidates because the vendor or its owners and operators are members of the aforesaid socialist collective?
11. If so, what would those requirements be?
12. Would the candidate be held to more stringent documentation requirements than that applied to other candidates because the vendor or its owners and operators are close political associates of the candidate?
13. If so, what would these requirements be?
14. If the work contracted for were done by the vendor and the price paid was commercially reasonable, could the expenditure still be found not qualified because it was later decided by the Commission that the payment was "solely for the benefit of" the aforesaid socialist collective?

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<sup>4</sup> By "candidate" or "candidates" in this and the questions to follow is meant the candidate or candidates and his or her or their authorized campaign committee or committees.

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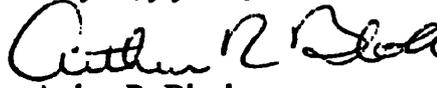
15. If so, by what criteria would such a determination be made?
16. Would the transaction in question be considered by the Commission as "not at arms length?"
17. What statute, regulation, contractual agreement, or other legal instrument binding upon a candidate who receives matching funds defines "arms length"/"not at arms length?"
18. Will the Commission use objective criteria to determine whether a transaction is "arms length?" If yes, what are they?
19. Will the Commission use other criteria to determine whether a transaction is "arms length?" If yes, (a) what are they, and (b) what procedures/standards, if any, will be used by the Commission to ensure that the application of these other criteria to Dr. Fulani's 1996 campaign is not politicized, partisan, discriminatory, biased, arbitrary or capricious?
20. Are there any special steps the candidate should take to structure the transactions in question in light of the circumstances of the aforesaid socialist collective and the close political association to help ensure that the expenditures in question will be found qualified campaign transactions?

#### Conclusion

It is requested that the Commission provide my office with copies of any comments filed with respect to this AOR. It is my understanding that it is Commission practice to provide the requestor with a draft AOR prior to its being placed on the Commission agenda for final action.

Thank you for your attention to this request. My client will look forward to receiving an advisory opinion promptly, and in any event within the time frames prescribed by federal law. I assume the Commission appreciates that time is of the essence in clarifying these questions, given the election calendar.

Very truly yours,

  
Arthur R. Block

ARB/bp  
cc: Dr. Lenora B. Fulani

RECEIVED  
3/26/96

**Lenora B. Fulani, Ph. D.**  
200 West 72nd Street, Suite 37  
New York, NY 10023  
p) 212-496-0534 f) 212-496-6992

March 25th, 1996

**Chairman**  
Attn: Audit Division, Rick Halter  
Federal Election Commission  
999 E Street, N. W.  
Washington, DC 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
MAR 26 10 04 AM '96

Dear Ms. Chairman:

As a candidate seeking to become eligible to receive Presidential primary matching funds, I certify and agree to the following provisions:

I. I am seeking the nomination of the party(s) formed and being formed under the name "Reform Party," as well as pursuing various other options for competing for minor party presidential nominations and independent presidential candidate ballot access in more than one State. I and my authorized committee(s) intend to receive matchable contributions which in the aggregate exceed \$5,000 from residents of each of at least twenty States which with respect to any one person do not exceed \$250.00

II. I and my authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the expenditure limitations prescribed by 26 USC Section 9035 and 11 CFR Part 9035.

III. I acknowledge that I have the burden of proving that disbursements made by me and any of my authorized committee(s) or agents are qualified campaign expenses as defined at 11 CFR 9032.9.

IV. I and my authorized committee(s) will comply with the documentation requirements set forth in 11CFR Section 9033.11

V. Upon the request of the Commission, I and my authorized committee(s) will supply an explanation of the connection between any disbursement made by me or my authorized committee(s) and the campaign as prescribed by 11 CFR Section 9033. 1(B)(3).

VI. In accordance with 11 CFR Section 9033.1(b)(4), I and my authorized campaign committee(s) agree to keep and furnish to the Commission all documentation for matching fund submission, any books, records (including bank records for all accounts) and supporting documentation and other information that the Commission may request.

VII. As provided at 11 CFR Section 9033.1(b)(5), I and my authorized campaign committee(s) agree to keep and furnish to the Commission all documentation relating to disbursements and receipts including any books, records (including bank records for all accounts), all documentation required by this section (including those required to be maintained under CFR 9033.11) and other information that the Commission may request. If I or any of my authorized campaign committee(s) maintains or uses computerized information containing any of the categories of data listed in 11 CFR 9033.12(a), the committee(s) will provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9038.1(b)(1) that meet the requirements of 11 CFR 9033.12(b). Upon request, documentation explaining the computer system's software capabilities shall be provided and such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee(s) shall be made available.

VIII. I and my authorized committee(s) will obtain and furnish to the Commission upon request all documentation relating to funds received and disbursements made on my behalf by other political committees and organizations associated with me.

IX. In accordance with 26 USC Section 9038 and 11 CFR Section 9033.1(b)(7), I and my authorized committee(s) shall permit an audit and examination pursuant to 11 CFR Part 9038 of all receipts and disbursements, including those made by me, all authorized committee(s) and any agent or person authorized to make expenditures on my behalf or on behalf of my authorized committee(s). I and my authorized committee(s) shall also provide any material required in connection with an audit, investigation, or examination conducted pursuant to 11 CFR Part 9039. I and my authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR Parts 9038 and 9039.

X. Pursuant to 11 CFR Section 9033.1(b)(8), the person listed below is entitled to receive matching fund payments on my behalf which will be deposited into the listed depository which I have designated as the campaign depository. Any change in the information required by this paragraph shall not be effective until submitted to the Commission in a letter signed by me or the Treasurer of my authorized principal campaign committee.

Name of Person: Jacqueline Salit  
Mailing Address: 200 West 72nd Street, #37  
New York, NY 10023

Designated Depository: Chase Manhattan Bank N.A.  
382 West 12th Street  
New York, NY 10014

XI. Pursuant to 11 CFR Section 9033.1(b)(9), (10), and (11), I and my authorized committee(s) will: (A) prepare matching fund submissions in accordance with the Federal Election Commission's Guideline for Presentation in Good Order, including the provision of any magnetic media pertaining to the matching fund submissions and which conforms to the requirements specified at 11 CFR Section 9033.12; (B) comply with the applicable requirements of 2 USC Section 431 et seq. 26 USC Section 9031 et seq. And the Commission's regulations at 11 CFR Parts 100-116, and 9031-9039; (C) pay any civil penalties included in a conciliation agreement or otherwise imposed under 2 USC Section 437g against myself or any of my authorized committee(s) or any agents thereof.

XII. Any television commercial prepared or distributed by me or my authorized committee(s) will be prepared in a manner which ensures that the commercial contains or is accompanied by closed captioning of the oral content of the commercial to be broadcast in line 21 of the vertical blanking interval, or is capable of being viewed by deaf or hearing impaired individuals via any comparable successor technology to line 21 of the vertical blanking record.

Signed:

A handwritten signature in cursive script, reading "Lenora B. Fulani", is written over a solid horizontal line.

Lenora B. Fulani, Ph.D.