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FEDERAL ELECTION  
COMMISSION  
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FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

APR 9 10 14 AM '96

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COMMENTS  
ADK 1996-12

VIA FACSIMILE

Federal Election Commission  
Office of the General Counsel  
999 E. Street, NW  
Washington, DC 20463  
Att: Associate General Counsel, N. Bradley Litchfield

Re: Docket Number: 1996-12

Dear F.E.C.:

Lenora Fulani's advisory opinion request illustrates clearly what is wrong with the FEC's preliminary claims about her last campaign.

If you do not intend to apply the same standards to other campaigns, then your position is of course unsustainable. If you do intend to apply them, it will constitute a dramatic change in policy, and one which will place major new restrictions on political speech.

In business, most new companies are started with funding and low-cost help from relatives and other friends. The same is true of most political campaigns, especially for underdog challengers and other dissidents. The arms-length standards raised in your investigation could be the excuse for extensive meddling in any campaign. But the campaigns of well-funded incumbents could just pay the higher price for completely independent help. It is challengers who would be most burdened by this new approach.

Most campaigns have key free or below-market advice from friends and relatives of the candidate. Money paid to those people is generally much less than what it would cost to purchase the same services from independent sources.

Presumably the FEC does not propose to define volunteer assistance as illegal campaign contributions. So the new approach proposed with Fulani would make it illegal to hire friends and relatives, even at below-market rates. But it would remain legal for such people to volunteer. That would give a further edge to wealthy people who can volunteer their time to campaigns without compensation.

Although I do not favor bureaucratic hassling of anyone, there is a silver lining in your pursuit of the Fulani investigation. It is further evidence that the FEC cannot fulfill its purpose while respecting the First Amendment. The federal courts might tire of having to repeatedly clip your wings, and see that the real purpose of the FEC, protecting incumbents from new parties and non-establishment challengers, is entirely inconsistent with the First Amendment and political freedom. But whatever the courts say, you should do the right thing, and that means abandoning the ambiguous and counterproductive "arms-length" theories spawned by your investigators of the Fulani campaign.

Sincerely,

Eric O'Keefe