



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20461

THIS IS THE BEGINNING OF MUR # 3506

DATE FILMED 10/28/93 CAMERA NO. 2

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL ELECTION COMMISSION

-----X
LAWRENCE A. AGRAN, EUGENE J. MCCARTHY
LENORA B. FULANI and RAFAEL MENDEZ,

Complainants,

--against--

FERNANDO FERRER, Bronx Borough
President, CITY OF NEW YORK, RICARDO
FERNANDEZ, President of Lehman College,
LEHMAN COLLEGE, WILLIAM J. CLINTON,
CLINTON FOR PRESIDENT COMMITTEE,
EDMUND G. BROWN, JR., and BROWN FOR
PRESIDENT

Respondents.
-----X

COMPLAINT

MUR 3506

1. This is a complaint alleging violations of 2

U.S.C. 441b(a) and 11 C.F.R. §§ 110.13, 114.4(e)(3) arising out of the co-sponsorship of a debate between presidential candidates Bill Clinton and Jerry Brown by a municipal corporation and a nonprofit educational corporation. The sponsorship by a municipal corporation is clearly an illegal corporate campaign contribution to candidates Clinton and Brown. The sponsorship by the nonprofit educational corporation may have otherwise been allowable under the FEC debates regulation, but by reason of its partnership with a highly partisan and illegal co-sponsor, it too is engaging in prohibited activity.

2. Complainants LAWRENCE A. AGRAN and EUGENE J. MCCARTHY are candidates for the presidential nomination of the

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APR 17 1992

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Democratic Party. Each of them was on the ballot in the New York State Democratic Primary held on April 7, 1992. Agran resides in Irvine, California; McCarthy resides in St. Paul, Minnesota.

3. Complainant LENORA B. FULANI is a resident of the City of New York. She is a former candidate for the 1992 presidential nomination of the Democratic Party and currently an independent candidate for the presidency. She is the Chairperson of the New Alliance Party.

4. Complainant RAFAEL MENDEZ is a resident of the County of the Bronx, City of New York, State of New York. He has been a candidate for public office including, most recently, a candidate for a seat on the New York City Council in the Bronx. He is a leader of the New Alliance Party.

5. Respondent FERNANDO FERRER is the Borough President of Bronx County. Respondent CITY OF NEW YORK is a municipal corporation in the State of New York. Bronx County is part of the City of New York municipal corporation.

6. Respondent RICARDO FERNANDEZ is President of respondent LEHMAN COLLEGE. Lehman College is a public institution of higher education which is, upon information and belief, chartered by the New York State Board of Regents.

7. Respondents WILLIAM J. CLINTON and EDMUND G. BROWN, JR., are candidates for the presidential nomination of the Democratic Party, and were on the April 7, 1992 New York State Primary ballot. Their respective campaign committees are also named as respondents herein.

8. Respondent Ferrer and respondent Lehman College co-sponsored a debate (the "debate") between candidates for the Democratic Party presidential nomination on March 31, 1992, at Lehman College's Center for the Performing Arts Center.

9. On or about March 9, 1992, respondents issued a press release on the letterhead of Ferrer, copy annexed hereto as Exhibit A. The press release portrays Ferrer as the principal organizer of the debate.

10. Upon information and belief Ferrer acted as the main organizer of the event, and used the resources of the New York City municipal corporation to promote, publicize, organize, administer and otherwise support and fund the event.

11. Upon information and belief, to the extent Lehman College provided resources for the debate, for all practical it gave Ferrer control over the use of these resources.

12. Ferrer is an elected official and active political leader. He is actively engaged in brokering numerous political relationships including, among others, the possible support of himself and other political leaders for the Clinton or Brown candidacies.

13. Ferrer and his political allies are political competitors of the New Alliance Party (NAP). NAP was supporting the candidacy of Agran in the New York primary. NAP also supported the right of McCarthy to be on the ballot in New York State.

14. There were only four Democratic Party presidential candidates on the ballot in New York State who had active cam-

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paigns -- Agran, Brown, Clinton and McCarthy. Ferrer invited Brown and Clinton to the debate, the two candidates sanctioned by Democratic Party leadership, but he excluded the two insurgent Democratic candidates who have received support from NAP, Agran and McCarthy.

15. Upon information and belief, Ferrer closely controlled the staging of the event, the granting of broadcaster and other print media access to the debate and to the candidates, and the distribution of tickets to the event, in a manner designed to further his partisan political goals. Admission to the audience was "by invitation only." See Exhibit D. A relatively small number of the available invitations were provided to Lehman College for distribution. The vast majority of the invitations, which were under Ferrer's control, were distributed through his partisan political networks as a form of patronage.

16. At the night of the event, complainant Fulani arrived with a valid credential to be in the audience and got on line to enter. The police at the entrance point were observed making note of her presence and communicating about the fact that she was present. Just as it was her turn to enter, the police stopped the line and stopped her from entering. In order to keep Fulani out, the police closed off admission to both her and to many others behind her in line who also had invitations. These people were kept out even though the event had not started and the auditorium never exceeded about 80% of its capacity. See Exhibit D. Upon information and belief the police were acting

upon instructions of Ferrer and or his agents to keep Fulani out of the auditorium.

17. Complainant Larry Agran gained admission to the auditorium. From the audience he spoke up to ask to be included in the debate. He was forceibly ejected by the police from the auditorium and placed under arrest. See Exhibit D.

First Violation

18. 2 U.S.C. § 441b(a) provides, in part, that "It is unlawful . . . for any corporation whatever . . . to make a contribution or expenditure . . . in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices [including President], or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section"

19. The City of New York, of which the Office of Bronx Borough President is a part, is a corporation subject to the above-quoted prohibition. The prohibition applies both to cash and in-kind contributions.

20. All and any in-kind services or materials and/or cash expenditures made by Ferrer's office, directly or indirectly, for the sponsorship of the debate are illegal campaign contributions.

21. All of the respondents herein were given detailed written notice by complainants in advance of the debate that the respondents actions violated federal law. The notice consisted

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of a letter and a proposed draft complaint to the FEC setting forth the specific legal violations. Copies of the letters are annexed hereto as Exhibit B; a copy of the proposed draft complaint that was enclosed with each letter is annexed hereto as Exhibit C. Hence Brown and Clinton and their campaign committees were on prior written notice that if they participated in the debate they would be knowingly accepting prohibited contributions.

Second Violation

22. The FEC has enacted a regulation that provides a limited exception to 2 U.S.C. § 441b(a) in connection with corporate expenditures for federal candidate debates. 11 C.F.R. §§ 110.13 and 114.4(e)(3) provide for sponsorship of nonpartisan candidate debates by nonprofit corporations recognized as exempt from taxation under I.R.C. § 501(c)(3) or, under certain conditions, § 501(c)(4), or by bona fide news organizations.

23. Respondents Ferrer and New York City qualify under neither of the above exceptions.

24. Respondent Lehman College could be initially eligible if it has an appropriate federal tax exempt status. However, it does not qualify under the regulation for the instant debate because of the role of Ferrer in the organizing of the debate. This debate was not organized in a nonpartisan manner. Furthermore, Lehman has been putting its resources at the direction of a person that is ineligible to sponsor a federal candidates debate.

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Relief Sought

COMPLAINANTS therefore respectfully request:

a. That the Commission investigate the allegations of this complaint, including the use of its subpoena powers to compel production of documents and testimony under penalties of perjury, in order to nature and exact value of the in kind and/or cash contributions expended by respondents in support of the presidential debate;¹

b. That the Commission find that the respondents have violated, inter alia, 2 U.S.C. § 441b(a) and 11 C.F.R. §§110.13, 114.4(e)(3);

c. That the Commission assess such civil penalties against the respondents as are warranted by the scope of the violations;

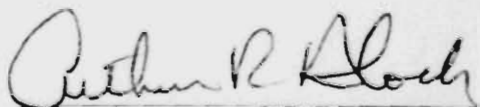
¹ For example, the Commission would determine how much time was spent by Ferrer and other city employees on the job to organize the debate and the hourly wage of such employees; the cost of telephone use, printing and reproduction; messenger and mailing expenses; direct and indirect overhead; use of cars and other transportation facilities; advertising expenses; public relations expenses; etc.

d. That the Commission grant such other and further relief as it may deem just and proper under the circumstances.

Respectfully submitted,

LAWRENCE A. AGRAN, EUGENE
MCCARTHY, LENORA B. FULANI and
RAFAEL MENDEZ

By:



ARTHUR R. BLOCK
Attorney for Complainants
250 West 57th Street
Suite 317
New York, New York 10019
(212) 956-5550

Dated: April 10, 1992

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VERIFICATION

The undersigned counsel for the complainants swears that, based on the matters of record referred to herein, the allegations and other facts in the complaint are true and correct to the best of his knowledge, information and belief.

By: Arthur R. Block
ARTHUR R. BLOCK

Subscribed and sworn to before
me this 10 day of April,
1992

Ellen Korner

ELLEN KORNER
Commissioner of Deeds
City of New York - No. 4-3677
Certificate filed in NY County
Commission Expires July 1, 1993

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Exhibit A



NEWS FROM THE BRONX

FERNANDO FERRER, BOROUGH PRESIDENT

BRONX COUNTY BUILDING
BRONX, N.Y. 10451

Clint Roswell
Press Secretary

590-3541

Contact: March 9, 1992

PRESIDENTIAL HOPEFULS HERE IN TV DEBATE FOR URBAN AMERICA

Presidential hopefuls will come to The Bronx and outline their vision for urban America---rather than point their fingers at symbols of broken dreams---during a 60-minute televised debate on March 31 at Lehman College.

Borough President Fernando Ferrer and Lehman College President Ricardo Fernandez have announced they will sponsor and serve as moderators of 1992's "The Debate for Urban America" at Lehman College's Center for the Performing Arts Center. Channel 7, WABC-TV will telecast the debate live as will Channel 47, WNJU-TV (with a Spanish sound simulcast).

"Candidates have come to The Bronx in the past to portray it as a symbol of everything wrong in urban America," said Mr. Ferrer. "This is our opportunity to talk about urban issues at a leading City college in The Bronx--not as a metaphor for urban failure--but as a proving ground for urban opportunities."

In 1988, The Bronx hosted the only debate during the entire presidential campaign devoted to urban issues at the Bronx campus of Fordham University. Mr. Ferrer had effectively broken a cycle of presidential contenders from Jimmy Carter to Ronald Reagan to Henry (Scoop) Jackson who exploited The Bronx as an

(more)

easy photo-opportunity for symbolizing urban decay without seriously discussing the problems of The Bronx, and all the Bronxes in urban America.

"In 1992," said Mr. Ferrer, "we hope to again focus the debate for urban America and engage the candidates in a dialogue about housing, health care, crime and drugs, education and economic development.

All the major candidates of the Democratic Party will participate in the March 31 event, according to Mr. Ferrer. Candidates from both parties were invited to Lehman.

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Exhibit B

**ARTHUR
BLOCK**
ATTORNEY AT LAW

250 West 57th Street, Suite 317, New York, NY 10019 (212) 956-5550

March 30, 1992

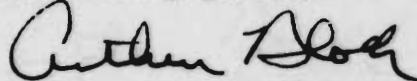
Mr. Fernando Ferrer
Bronx Borough President
Bronx County Building
Bronx, New York 10451

Dear Borough President Ferrer:

On March 27, 1992, I informed your counsel that your sponsorship of the March 31, 1992 presidential candidates debate at Lehman College violates federal law.

Enclosed herewith is a draft complaint to the Federal Elections Commission, which is provided to you to give you further notice of the illegal nature of your activities. It is my clients' intention to file with the FEC a complaint in form substantially similar to the enclosed draft if the illegal conduct is not remedied forthwith.

Very truly yours,



Arthur R. Block

ARB/esk
Enclosure

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**ARTHUR
BLOCK**
ATTORNEY AT LAW

250 West 57th Street, Suite 317, New York, NY 10019 (212) 956-5550

March 30, 1992

Mr. Ricardo Fernandez
President
Herbert H. Lehman College
Bedford Park Boulevard
West Bronx, New York 10468

Dear President Fernandez:

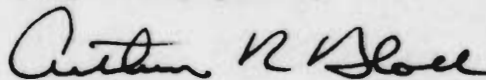
I represent presidential candidates Lawrence Agran, Eugene McCarthy and Dr. Lenora B. Fulani, and New Alliance Party leader Dr. Rafael Mendez.

I am writing to inform you that Lehman College's co-sponsorship of the March 31, 1992, presidential candidates debate with Bronx Borough President Ferrer violates the federal campaign finance laws. I spoke to Mr. Ferrer's counsel about this last Friday but she informed me that Mr. Ferrer would proceed with the debate as planned.

Enclosed is a draft complaint to the Federal Elections Commission which provides you with more detailed notice of the illegal nature of Lehman College's participation in this project. It is my clients' intention to file a complaint in form substantially similar to the enclosed draft with the FEC if the illegal conduct is not remedied forthwith.

I would further note that if Lehman College is exempt from taxation under I.R.C. § 501(c)(3), then its co-sponsorship of this debate with a clearly partisan political operative, Mr. Ferrer, violates the anti-electioneering provisions of the Code both directly and under the "coordinated activities" doctrine. With regard to this possible tax law violation, my clients reserve the right to take such actions with the Internal Revenue Service and the federal courts as they may deem appropriate.

Very truly yours,



Arthur R. Block

ARB/esk
Enclosure

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ARTHUR BLOCK

ATTORNEY AT LAW

250 West 57th Street, Suite 317, New York, NY 10019 (212) 956-5550

March 30, 1992

O. Peter Sherwood
Corporation Counsel of the
City of New York
100 Church Street
New York, NY 10007

Dear Mr. Sherwood:

I represent presidential candidates Lawrence A. Agran, Eugene McCarthy and Dr. Lenora B. Fulani, and New Alliance Party leader Dr. Rafael Mendez.

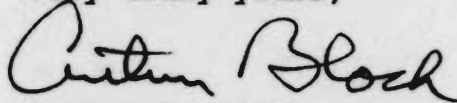
Bronx Borough President Fernando Ferrer has brought New York City into violation of the federal election campaign finance laws through his sponsorship of a presidential candidates debate on March 31, 1992. My clients intend to file a complaint with the Federal Elections Commission against the City of New York if this violation is not abated forthwith.

As a courtesy, I enclose a copy of a draft complaint, so that you may be apprised of the legal and factual basis for this claim.

If the City intends to take any timely action to correct this situation and avoid protracted litigation, please contact me as soon as possible.

Thank you for your consideration of this matter.

Very truly yours,



Arthur R. Block

ARB/esk
Enclosure

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**ARTHUR
BLOCK**
ATTORNEY AT LAW

250 West 57th Street, Suite 317, New York, NY 10019 (212) 956-5550

March 30, 1992

Mr. William J. Clinton
c/o Clinton for President Committee
1560 Broadway #700
New York, NY 10036

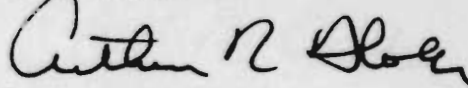
Dear Mr. Clinton:

I represent presidential candidates Lawrence Agran, Eugene McCarthy and Dr. Lenora B. Fulani, and New Alliance Party leader Dr. Rafael Mendez.

The federal election campaign finance laws prohibit your knowing receipt of corporate campaign contributions. This is to inform you that your participation in the March 31, 1992 presidential candidate debate sponsored by the Office of the Bronx Borough President, which is part of the municipal corporation of the City of New York, violates federal law.

Enclosed is a copy of a draft complaint to the Federal Elections Commission naming you as a respondent. If you participate in this illegally supported event it is my clients' intention to file a complaint with the FEC in form substantially similar to the enclosed draft.

Very truly yours,



Arthur R. Block

ARB/esk
Enclosure

**ARTHUR
BLOCK**
ATTORNEY AT LAW

250 West 57th Street, Suite 317, New York, NY 10019 (212) 956-5550

March 30, 1992

Mr. Edmund G. Brown, Jr.
c/o Brown for President
330 West 42nd Street #2H
New York, NY 10036

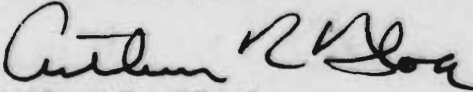
Dear Mr. Brown:

I represent presidential candidates Lawrence Agran, Eugene McCarthy and Dr. Lenora B. Fulani, and New Alliance Party leader Dr. Rafael Mendez.

The federal election campaign finance laws prohibit your knowing receipt of corporate campaign contributions. This is to inform you that your participation in the March 31, 1992 presidential candidate debate sponsored by the Office of the Bronx Borough President, which is part of the municipal corporation of the City of New York, violates federal law.

Enclosed is a copy of a draft complaint to the Federal Elections Commission naming you as a respondent. If you participate in this illegally supported event it is my clients' intention to file a complaint with the FEC in form substantially similar to the enclosed draft.

Very truly yours,


Arthur R. Block

ARB/esk
Enclosure

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DRAFT -- NOT FILED

UNITED STATES OF AMERICA

BEFORE THE FEDERAL ELECTION COMMISSION

-----X
LAWRENCE A. AGRAN, EUGENE J. MCCARTHY
LENORA B. FULANI and RAFAEL MENDEZ, :
Complainants, : COMPLAINT
--against-- : MUR _____
FERNANDO FERRER, Bronx Borough :
President, CITY OF NEW YORK, RICARDO :
FERNANDEZ, President of Lehman College, :
LEHMAN COLLEGE, WILLIAM J. CLINTON, :
CLINTON FOR PRESIDENT COMMITTEE, :
EDMUND G. BROWN, JR., and BROWN FOR :
PRESIDENT :
Respondents. :
-----X

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1. This is a complaint alleging violations of 2 U.S.C. 441b(a) and 11 C.F.R. §§ 110.13, 114.4(e)(3) arising out of the co-sponsorship of a debate between presidential candidates Bill Clinton and Jerry Brown by a municipal corporation and a nonprofit educational corporation. The sponsorship by a municipal corporation is clearly an illegal corporate campaign contribution to candidates Clinton and Brown. The sponsorship by the nonprofit educational corporation may have otherwise been allowable under the FEC debates regulation, but by reason of its partnership with a highly partisan and illegal co-sponsor, it too is engaging in prohibited activity.

2. Complainants LAWRENCE A. AGRAN and EUGENE J. MCCARTHY are candidates for the presidential nomination of the

Democratic Party. Each of them is on the ballot in the New York State Democratic Primary to be held on April 7, 1992. Agran resides in Irvine, California; McCarthy resides in St. Paul, Minnesota.

3. Complainant LENORA B. FULANI is a resident of the City of New York. She is a former candidate for the 1992 presidential nomination of the Democratic Party and currently an independent candidate for the presidency. She is the Chairperson of the New Alliance Party.

4. Complainant RAFAEL MENDEZ is a resident of the County of the Bronx, City of New York, State of New York. He has been a candidate for public office including, most recently, a candidate for a seat on the New York City Council in the Bronx. He is a leader of the New Alliance Party.

5. Respondent FERNANDO FERRER is the Borough President of Bronx County. Respondent CITY OF NEW YORK is a municipal corporation in the State of New York. Bronx County is part of the City of New York municipal corporation.

6. Respondent RICARDO FERNANDEZ is President of respondent LEHMAN COLLEGE. Lehman College is a public institution of higher education which is, upon information and belief, chartered by the New York State Board of Regents.

7. Respondents WILLIAM J. CLINTON and EDMUND G. BROWN, JR., are candidates for the presidential nomination of the Democratic Party, and are on the April 7, 1992 New York State

Primary ballot. Their respective campaign committees are also named as respondents herein.

8. Respondent Ferrer and respondent Lehman College have announced that they are co-sponsoring a debate (the "debate") between candidates for the Democratic Party presidential nomination on March 31, 1992, to be held at Lehman College's Center for the Performing Arts Center.

9. On or about March 9, 1992, respondents issued a press release on the letterhead of Ferrer, copy annexed hereto as Exhibit A. The press release portrays Ferrer as the principal organizer of the debate.

10. Upon information and belief Ferrer has acted as the main organizer of the event, and has used the resources of the New York City municipal corporation to promote, publicize, organize, administer and otherwise support and fund the event.

11. Upon information and belief, to the extent Lehman College has provided resources for the debate, it has, for all practical purposes, given Ferrer control over the use of these resources.

12. Ferrer is an elected official and active political leader. He is actively engaged in brokering numerous political relationships including, among others, the possible support of himself and other political leaders for the Clinton or Brown candidacies.

13. Ferrer and his political allies are political competitors of the New Alliance Party (NAP). NAP is supporting

the candidacy of Agran. NAP has also supported the right of McCarthy to be on the ballot in New York State.

14. There are only four Democratic Party presidential candidates on the ballot in New York State who have active campaigns -- Agran, Brown, Clinton and McCarthy. Ferrer invited Brown and Clinton to the debate, the two candidates sanctioned by Democratic Party leadership, but and excluded the two insurgent Democratic candidates who have received support from NAP, Agran and McCarthy.

15. Upon information and belief, Ferrer has closely controlled the staging of the event, the granting of broadcaster and other print media access to the debate and to the candidates, and the distribution of tickets to the event, in a manner designed to further his partisan political goals. A relatively small number of the available tickets were provided to Lehman College for distribution. Few if any tickets under Ferrer's control were made available to members of the public but rather were distributed through his partisan political networks as a form of patronage.

First Violation .

16. 2 U.S.C. § 441b(a) provides, in part, that "It is unlawful . . . for any corporation whatever . . . to make a contribution or expenditure . . . in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices [including President], or for any candidate, political committee, or other person knowingly

to accept or receive any contribution prohibited by this section
....."

17. The City of New York, of which the Office of Bronx Borough President is a part, is a corporation subject to the above-quoted prohibition. The prohibition applies both to cash and in-kind contributions.

18. All and any in-kind services or materials and/or cash expenditures made by Ferrer's office, directly or indirectly, for the sponsorship of the debate are illegal campaign contributions.

19. Respondents Brown and Clinton and their campaign committees are being notified by complainants prior to the staging of the debate that if they participate in the debate they will be knowingly accepting prohibited contributions.

Second Violation

20. The FEC has enacted a regulation that provides a limited exception to 2 U.S.C. §441b(a) in connection with corporate expenditures for federal candidate debates. 11 C.F.R. §§ 110.13 and 114.4(e)(3) provide for sponsorship of nonpartisan candidate debates by nonprofit corporations recognized as exempt from taxation under I.R.C. § 501(c)(3) or, under certain conditions, § 501(c)(4), or by bona fide news organizations.

21. Respondents Ferrer and New York City qualify under neither of the above exceptions.

22. Respondent Lehman College could be initially eligible if it has an appropriate federal tax exempt status.

However, it does not qualify under the regulation for the instant debate because of the role of Ferrer in the organizing of the debate. This debate is not being organized in a nonpartisan manner. Furthermore, Lehman has been putting its resources at the direction of a person that is ineligible to sponsor a federal candidates debate.

Relief Sought

COMPLAINANTS therefore respectfully request:

a. That the Commission investigate the allegations of this complaint, including the use of its subpoena powers to compel production of documents and testimony under penalties of perjury, in order to nature and exact value of the in kind and/or cash contributions expended by respondents in support of the presidential debate;¹

b. That the Commission find that the respondents have violated, inter alia, 2 U.S.C. § 441b(a) and 11 C.F.R. §§ 110.13, 114.4(e)(3);

c. That the Commission assess such civil penalties against the respondents as are warranted by the scope of the violations;

1 For example, the Commission would determine how much time was spent by Ferrer and other city employees on the job to organize the debate and the hourly wage of such employees; the cost of telephone use, printing and reproduction; messenger and mailing expenses; direct and indirect overhead; use of cars and other transportation facilities; advertising expenses; public relations expenses; etc.

d. That the Commission grant such other and further relief as it may deem just and proper under the circumstances.

Respectfully submitted,

LAWRENCE A. AGRAN, EUGENE
MCCARTHY, LENORA B. FULANI and
RAFAEL MENDEZ

By:

ARTHUR R. BLOCK
Attorney for Complainants
250 West 57th Street
Suite 317
New York, New York 10019
(212) 956-5550

Dated: March __, 1992

93040983606

VERIFICATION

The undersigned counsel for the complainants swears that, based on the matters of record referred to herein, the allegations and other facts in the complaint are true and correct to the best of his knowledge, information and belief.

By: _____
ARTHUR R. BLOCK

Subscribed and sworn to before
me this _____ day of March,
1992

93040983607



NEWS FROM THE BRONX

FERNANDO FERRER, BOROUGH PRESIDENT
BRONX COUNTY BUILDING
BRONX, N.Y. 10451

Clint Roswell
Press Secretary

590-3541

Contact: March 9, 1992

PRESIDENTIAL HOPEFULS HERE IN TV DEBATE FOR URBAN AMERICA

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economic development.

All the major candidates of the Democratic Party will
participate in the March 31 event, according to Mr. Ferrer.
Candidates from both parties were invited to Lehman.

#

9 3 0 4 0 9 8 3 6 0 9

NOTICE OF ENTRY

Sir:-Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

ARTHUR R. BLOCK

Attorney for

Office and Post Office Address, Telephone

250 WEST 57TH STREET
SUITE 317
NEW YORK, N.Y. 10019
(212) 956-5550

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:-Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on 19

at M.

Dated,

Yours, etc.,

ARTHUR R. BLOCK

Attorney for

Office and Post Office Address, Telephone

250 WEST 57TH STREET
SUITE 317
NEW YORK, N.Y. 10019
(212) 956-5550

To

Attorney(s) for

MUR No.

Year 1992

UNITED STATES OF AMERICA
BEFORE THE FEDERAL ELECTION COMMISSION

LAWRENCE A. AGRAN, EUGENE J. MCCARTHY, LENORA B. FULANI and RAFAEL MENDEZ,

Complainants,

--against--

FERNANDO FERRER, Bronx Borough President, CITY OF NEW YORK, RICARDO FERNANDEZ, President of Lehman College, LEHMAN COLLEGE, WILLIAM J. CLINTON, CLINTON FOR PRESIDENT COMMITTEE, EDMUND G. BROWN, JR. and BROWN FOR PRESIDENT,

~~Respondents.~~

COMPLAINT

ARTHUR R. BLOCK

Attorney for

Complainants

Office and Post Office Address, Telephone

250 WEST 57TH STREET
SUITE 317
NEW YORK, N.Y. 10019
(212) 956-5550

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

0 1 9 2 8 6 0 7 0 2 6

93040983611



Newsday / Bill Davis

Candidate Lenora Fulani, center, and others crowd gate to Lehman College after being denied entry.

Lots of Bronx Jeers and Cheers

By Rose Marie Arce

STAFF WRITER

The loudest cheers at the Bronx Democratic debate last night went to candidate Larry Agran, who was arrested after he demanded a place on the podium, and another presidential aspirant, Lenora Fulani, who angrily confronted police after she was denied entry to the auditorium.

Agran, 47, the former mayor of Irvine, Calif., drew applause when police officers dragged him kicking and screaming from the auditorium. Agran and Arthur Goldstein, 62, of Great Neck, L.I., were arrested on charges of disorderly conduct, resisting arrest and trespassing, police said.

The Associated Press reported that one of its reporters saw police push Fulani, the presidential candidate of the New Alliance Party, up against a chain-link fence. About 150 of her supporters chanted and clapped after police denied her entry.

Fulani, who disrupted a speech by candidate and Arkansas Gov. Bill Clinton in Harlem on Saturday, was angry at being turned away. She said she had a guest pass to attend the debate.

"This is an outrage. Black people can't come to the debate," she said. "As soon as I got on the line they

closed the line off."

Police said the gates were closed at 6:55 p.m. on the orders of officials at Lehman College and the Bronx Borough president's office, sponsors of the debate. Police said Fulani arrived too late.

Det. Kim Royster, a police spokeswoman, said Fulani and 150 supporters tried to storm the gate. Three police officers received minor injuries. No one was arrested.

"I was standing for 20 minutes. As soon as I came on line, they closed the door," said Fulani. "This is a democracy. I have a pass and I'm trying to get in."

Agran was arrested as he stood and said repeatedly: "I respectfully request to be included in tonight's debate."

The second-loudest uproar came when presidential hopeful and former California Gov. Jerry Brown, while badmouthing big-money campaign contribution, recited his 1-800 number on live TV.

Father Richard Gorman, of Bronx Community Board 12, thought the would-be presidents are out of touch. "Same old thing," he said. "I didn't hear one word about what's happening in Bronx County, AIDS, decrepit transportation or the crumbling education system."

The 2,300-seat auditorium was about 80 percent full even though tickets had been given out to fill the place. *This story was supplemented with wire service reports.*

NEW YORK NEWSDAY, WEDNESDAY, APRIL 1, 1992

Newsday
4/1/92

2 1 9 3 8 0 4 0 3 6 1 2

CAMPAIGN '92

Bill, Jerry can agree

Dem hopefuls vow urban aid

By JOEL SIEGEL and FRANK LOMBARDI
Daily News Staff Writers

Bill Clinton and Jerry Brown peacefully tried to outdo each other last night as champions of America's neglected cities, but it was the nonparticipants in last night's presidential debate at Lehman College in the Bronx who caused the ruckus.

Both candidates for Tuesday's critical New York primary also were on their best behavior at an earlier debate at Gracie Mansion, where they were questioned on urban issues by Mayor Dinkins and 12 other mayors.

Two hecklers were arrested after they interfered with the Bronx debate at Lehman's Performing Arts Building — including Larry Agran, the former mayor of Irvine, Calif., who is also on the New York primary ballot.

Outside the building, independent presidential candidate Lenora Fulani tussled with police when they told her it was too late to admit her. There was shoving and pushing, but no arrests were made then.

The Lehman debate also drew about 1,000 demonstrators, most of them students upset over a proposed \$500 tuition hike in the city university system.

Brown depicted himself as leading a near-revolution against the "corrupt status quo."

Clinton warned, "We can't afford the wrong change ... I'll give you the kind of change this country needs."

Both said they opposed English-only policies for schools, an issue important to Hispanics.

Both candidates said they support the Brady bill requiring a waiting period for handgun purchases. Brown favored a five-year moratorium on sale and manufacture of all guns including handguns, while Clinton said he favored a moratorium on assault weapons but hedged on handguns.

At Gracie Mansion, Brown pushed his 13% flat tax, which Clinton said would only help the rich. Both said they'd divert defense dollars to cities — Brown promising a 50% defense cut, Clinton a 30% reduction.

The lack of fireworks at the debates signaled an apparent change in Brown's confrontational style. "Every time I attack him, it makes me look shrill," Brown told the Daily News earlier. He said Clinton has a way of attacking his rivals to "make it look like he's the victim."

Brown said Clinton's willingness to debate him at least four more times before Tuesday showed that Clinton's "situation is so desperate ... and this race is volatile."

Daily News Staff Writer
Barbara Ross contributed to this report.



PRESIDENTIAL candidate Lenora Fulani of the New Alliance Party flashes credentials but is blocked from entering debate at Lehman College in the Bronx last night.

CLARENCE JONES

RATING THE DEBATE



Ken Auletta

THE DEBATE TOOK PLACE ON THREE LEVELS. POLITICALLY AND STYLICALLY, BROWN WON. In New York primaries, the more liberal candidate usually captures more votes, and Brown emerged as the fiery challenger of the status quo. Clinton, who has dominated past debates, seemed listless, less assured. Substantively, Clinton won. The "Slick Willie" of this debate was Brown, who pumped viewers with the narcotic that as President he could almost immediately afford to transform urban America into an earthly paradise because all that was lacking was will and money.



Arthur Browne

CLINTON WON ON SUBSTANCE BUT BROWN WON ON STYLE, AND THIS BEING A TELEVISED DEBATE, THAT MEANS HE WON OVERALL. Brown was angry, visceral and emotional, which plays on TV better than facts and figures. Clinton showed a mastery of detail and scored on Brown's flat tax, but he also took a hit on the question of signing an English-only law in Arkansas, one more issue he'll have to explain to an important constituency.



Juan Gonzalez

BROWN WON. He had more outrage about the country's problems and the best lines. His best statement was, "We're turning the planet into a stinking junkyard." Clinton seemed competent but lifeless.

By invitation only

A security detail of 500 police officers, including some in riot gear and others on horseback, were on hand to handle the demonstrators and the more than 2,000 invitation-only guests at the event, sponsored by the college and Bronx Borough President Fernando Ferrer.

The major run-in between Clinton and Brown involved a controversial New Jersey law that halts additional welfare payments to mothers who have more children. The law has not yet taken effect and requires a presidential waiver to be implemented.

Clinton, who has promoted a workfare program, said he "would probably grant the waiver and let them experiment with" the New Jersey law. But he said he doesn't agree that the "New Jersey system is the best approach."

Brown said he would not grant the waiver. "I think we (government) have to take the responsibility" for providing the added welfare assistance. "I'm not going to start interfering with such intimate decisions as when someone has a child or not."

However, the two agreed more than they disagreed, especially on the need to undo 12 years of Reagan-Bush cuts, backs in urban programs.

INSIDE

- Brown backs right of same-sex couples to wed ... Page 21
- Jerry's views on abortion ... Page 21
- The less-than-sensu Jerry Brown ... Page 21
- Clinton slams Bush's Israel policy ... Page 20
- Brown wins Vermont caucus voting ... Page 20
- Like to bake? It's okay with Hillary ... Page 20
- Brown's demagoguery. Let's Enk Nelson's column. Page 21
- Time for Brown to act like a grownup. Editorial ... Page 20

93040983613

93040983614

TIMOTHY J. PENNY

1ST DISTRICT, MINNESOTA

COMMITTEES:
AGRICULTURE

VETERANS' AFFAIRS

CHAIRMAN, SUBCOMMITTEE ON
EDUCATION, TRAINING AND EMPLOYMENT

SELECT COMMITTEE ON HUNGER

WHIP-AT-LARGE

Congress of the United States
House of Representatives
Washington, DC 20515-2501

WASHINGTON OFFICE
436 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2301
(202) 225-2472DISTRICT OFFICES
PARK TOWERS
22 NORTH BROADWAY
ROCHESTER, MN 55906
(507) 281-8053BLUE EARTH COUNTY GOVERNMENT CENTER
P.O. Box 3148
MARSHALL, MN 56001
(507) 628-6921

April 1, 1992

The Hon. Ron Brown
 Chairman
 Democratic National Committee
 430 South Capitol Street SE
 Washington, D.C. 20003

Dear Chairman Brown:

Last night in the Bronx, New York, a Democratic candidate for President, Larry Agran, rose from the audience during the Lehman College debate to ask that he be allowed to participate with Governors Bill Clinton and Jerry Brown. Instead of being allowed to take the podium, Mayor Agran was arrested and taken away by police officers.

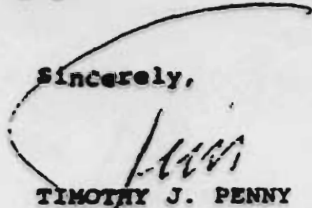
Unfortunately, Mayor Agran's arrest is only the latest in a string of orchestrated efforts on the part of Democratic Party officials to exclude certain candidates from presidential debates. As a Democrat and as an American I must tell you that I am very concerned by what occurred last night at Lehman College.

Not only was the treatment accorded Mayor Agran egregious, the exclusion of Mayor Agran and Senator Eugene McCarthy from the dialogue was a disservice to the Democratic Party and all fair-minded American citizens. Americans understand better than many elected and appointed officials that campaigns for public office should serve to educate and expand the public dialogue, not to unnecessarily restrict debate among candidates. As a party--and more importantly, as a country dedicated to freedom of speech and democratic organizing principles--we gain nothing from denying individuals a fair opportunity to express their views.

I am asking you as Chairman of the Democratic Party to demand that state party officials open up the debate process to all candidates. In doing so, we will not see last night's events repeated.

Thank you. I await your reply.

Sincerely,


 TIMOTHY J. PENNY
 Member of Congress

TJP:jt

93040983615



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 24, 1992

Arthur R. Block, Esq.
250 West 57th Street
Suite 317
New York, New York 10019

RE: MUR 3506

Dear Mr. Block:

This letter acknowledges receipt on April 17, 1992, of the complaint filed by you on behalf of your clients, Lawrence A. Agran, Eugene McCarthy, Lenora B. Fulani and Rafael Mendez, alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Fernando Ferrer personally, and as President of the Borough of the Bronx; The City of New York; Ricardo Fernandez, as President of Lehman College; Lehman College; William J. Clinton; Clinton for President Committee and Robert A. Farmer, as treasurer; Edmund G. Brown, Jr.; and Brown for President and Blaine Quick, as treasurer. The respondents 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 3506. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lisa E. Klein", is written over the typed name.

Lisa E. Klein
Assistant General Counsel

Enclosure
Procedures

93040983616



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

April 24, 1992

Peter Sherwood, Corporation Counsel
City of New York
100 Church Street
New York, New York 10007

RE: MUR 3506

Dear Mr. Sherwood:

The Federal Election Commission received a complaint which indicates that the City of New York 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 3506. 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 City of New York 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.

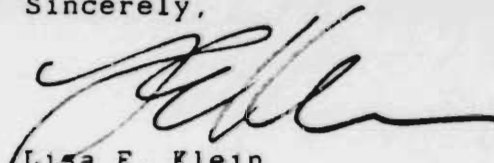
This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed 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.

93040983617

Page 2

If you have any questions, please contact Dawn Odrowski, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Lisa E. Klein
Assistant General Counsel

Enclosures

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

cc: Honorable David Dinkins
Office of the Mayor
City Hall
New York, New York 10007

93040983618



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

April 24, 1992

Fernando Ferrer, President
Borough of the Bronx
851 Grand Concourse
Bronx, New York 10451

RE: MUR 3506

Dear Mr. Ferrer:

The Federal Election Commission received a complaint which indicates that you, personally, and as president of the Borough of the Bronx, 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 3506. 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, personally, and as president of the Borough of the Bronx, 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.

93040983619

Page 2

If you have any questions, please contact Dawn Odrowski, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Lisa E. Klein
Assistant General Counsel

Enclosures

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

cc: Terry Blank, Esq.
Counsel for the Office of Bronx Borough President
851 Grand Concourse
Third Floor
Bronx, N.Y. 10451

93040983620



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

April 24, 1992

Robert A. Farmer, Treasurer
Clinton for President Committee
P.O. Box 615
Little Rock, Arkansas 72203

RE: MUR 3506

Dear Mr. Farmer:

The Federal Election Commission received a complaint which indicates that Clinton for President Committee ("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 3506. 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.

93040983621

If you have any questions, please contact Dawn Odrowski, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Lisa E. Klein
Assistant General Counsel

Enclosures

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

93040983622



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

April 24, 1992

Honorable William J. Clinton
1800 Center Street
Little Rock, Arkansas 72206

RE: MUR 3506

Dear Governor Clinton:

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 3506. 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.

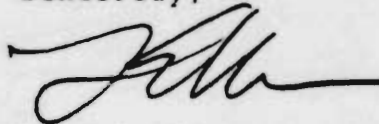
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93040983623

Page 2

If you have any questions, please contact Dawn Odrowski, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Lisa E. Klein
Assistant General Counsel

Enclosures

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

93040983624



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 24, 1992

Blaine Quick, Treasurer
Brown for President
2121 Cloverfield Blvd., Suite 120
Santa Monica, California 90404

RE: MUR 3506

Dear Mr. Quick:

The Federal Election Commission received a complaint which indicates that Brown 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 3506. 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.

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93040983625

Page 2

If you have any questions, please contact Dawn Odrowski, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Lisa E. Klein
Assistant General Counsel

Enclosures

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

93040983626



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 24, 1992

Edmund G. Brown, Jr.
3022 Washington Street
San Francisco, California 94115

RE: MUR 3506

Dear Mr. Brown:

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 3506. 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.

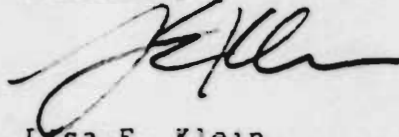
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93040983627

Page 2

If you have any questions, please contact Dawn Odrowski, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Lisa E. Klein
Assistant General Counsel

Enclosures

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

93040983628



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

April 24, 1992

Dr. Richard Fernandez, President
Herbert H. Lehman College
250 Bedford Park Blvd. West
Bronx, New York 10468

RE: MUR 3506

Dear Dr. Fernandez:

The Federal Election Commission received a complaint which indicates that the Herbert H. Lehman College and you, as president, 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 3506. 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 Herbert H. Lehman College and you, as president, 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.

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93040983629

Page 2

If you have any questions, please contact Dawn Odrowski, the attorney assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Lisa E. Klein
Assistant General Counsel

Enclosures

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

93040983630

ARTHUR BLOCK

ATTORNEY AT LAW

250 West 57th Street, Suite 317, New York, NY 10019 (212) 956-5550

RECEIVED
FEDERAL ELECTION
COMMISSION
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MAY 4 10 50 AM '92

April 29, 1992

Lisa E. Klein
Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 3506

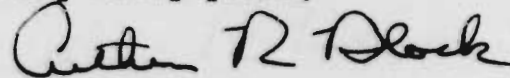
Dear Ms. Klein:

In further support of the complaint in the above-referenced MUR I enclose a copy of a column that was published in the April 24, 1992 issue of New York City's leading Spanish language newspaper, Eldiario, concerning the presidential debate at Lehman College.

Also enclosed is a copy of the text of the column in English as submitted by Ms. Green to the newspaper. Although I do not speak Spanish, I see that the printed version has fewer paragraphs than the manuscript, so I assume the printed version is edited down.

Ms. Green's account confirms the partisan nature of the staging of the debate. The printing of the column by Eldiario confirms the seriousness with which informed observers in the Latino community view the charges against Borough President Ferrer, one of the respondents in this matter.

Very truly yours,



Arthur R. Block

ARB/esk

Enclosures

cc: Lawrence A. Agran
Eugene McCarthy
Lenora B. Fulani
Rafael Mendez

92 MAY -4 PM 3:36

RECEIVED
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9 3 0 4 0 9 8 3 6 3 2

el diario



El
campeón
de los
hispanos

LA PRENSA

EDICION METROPOLITANA

NUEVA YORK, DOMINGO 26 DE ABRIL DE 1992

\$1.00

OPINION

**DEBORAH
GREEN**

COLUMNISTA INVITADA

Prácticas antidemocráticas en el debate de Lehman College

Una de las cuestiones más controversiales surgida de las elecciones primarias de 1992, es la naturaleza del mismo proceso democrático. ¿Cuánta democracia, exactamente, debemos tener? ¿Cuán accesible al público debe ser el proceso electoral, y por extensión, a los llamados "candidatos del pueblo", insurgentes, independientes, que, aunque gozan de todo nuestro apoyo y simpatía en nuestras comunidades, no cuentan con la aprobación de la maquinaria partidista?

Estas son interrogantes que constituyen parte integral de la democracia. Una democracia excluyente que silencia sistemáticamente a los nuevos líderes y a las nuevas ideas que surgen desde abajo resultará a la larga en peligrosas prácticas antidemocráticas en el campo social, económico y extranjero.

A juzgar por la manera como se ha manejado el debate en el proceso primario en esta elección, la verdadera inclusión democrática tiene una prioridad muy baja para el liderazgo del Partido Demócrata. El debate final en la primaria de Nueva York, patrocinado por el presidente de El Bronx, Fernando Ferrer, en Lehman College, el 31 de marzo, constituyó un caso verdaderamente vergonzoso.

Aun cuando había cuatro candidatos activos en la papeleta demócrata para la primaria del 7 de abril en Nueva York, Ferrer invitó solamente a dos de ellos, excluyendo a Larry Agran y al senador Eugene McCarthy. A pesar de que el debate tenía lugar en una ciudad que es hispana en un 25 por ciento, Ferrer decidió no incluir a un representante de la prensa hispana en el panel de periodistas.

No contento con excluir a la mitad de los candidatos y una parte importante del cuerpo de la prensa de la ciudad, los demócratas de El Bronx también trataron de escoger la audiencia para el debate. La gente que deseaba asistir al evento y no estaban afiliados con uno de los dos "grandes candidatos" reportaron que se les exigió su certificado de nacimiento para poder entrar. El día del debate, el área del Lehman College se convirtió en terreno prohibido para todo aquel que no tuviera una identificación de la universidad. Cientos de agentes policiales rodearon el recinto para excluir a los que no tuvieran entradas. Pero aun aquellos con entradas no estaban seguros si entrarían. Aunque tenían boletos, a la candidata presidencial independiente, la afroamericana Lenora Fulani, la policía le negó la entrada, según instrucciones directas de Ferrer. Cuando protestó, la agarraron y la lanzaron violentamente contra una alambrada.

Tal política de exclusión empobrece el diálogo político en el momento mismo cuando más necesitamos las ideas y la participación de todos nuestros ciudadanos. Los debates presidenciales deben democratizarse más. Actualmente hay dos proyectos de ley en el Congreso, el H.R. 791 y S. 2213, que abrirían algunos debates en elecciones generales, por lo menos, a candidatos "menores" calificados.

Deborah Green es Directora Política del Rainbow Lobby, Inc.

92 MAY -4 PH 3:36

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF THE CHIEF CLERK
WASHINGTON, D.C. 20543

UNDEMOCRATIC PRACTICES AT THE LEHMAN COLLEGE DEBATE

One of the more controversial issues emerging from the 1992 Presidential primary battles, is the nature of the democratic process itself. Just how much democracy should we have? How accessible should the electoral process be to the people, and by extension, to the so-called "peoples' candidates" -- insurgents, independents, outsiders who, though they enjoy considerable support in our communities, lack the approval of the party hierarchy? These are questions of democracy policy. An exclusionary democracy policy that systematically silences the new leaders and new ideas that come up from the grassroots will result in dangerously undemocratic social, economic and foreign policies.

Judging from their handling of the primary debate process this election season, true democratic inclusion is a low priority for the Democratic Party leadership. The final New York primary debate, sponsored by Bronx Borough President Fernando Ferrer at Lehman College on March 31, was a shocking case in point.

Although there were four active candidates on the Democratic ballot for New York's April 7 primary, Mr. Ferrer invited only half of them, excluding Larry Agran and Sen. Eugene McCarthy. In spite of the fact that the debate was taking place in a city that is 25% Latino, Mr. Ferrer chose not to include a representative from the Spanish-language press in the panel of journalists asking questions of the candidates.

Not content with excluding half the candidates and an important part of the city's press corps, the Bronx Democrats also tried to screen the audience for the debate. People wishing to attend the event who were not affiliated with one of the two "major candidates" reported that they were required to produce their birth certificate in order to obtain a ticket. The day of the event, the Lehman campus was sealed off to everyone who didn't have a school ID. Hundreds of police officers surrounded the campus to keep out non-ticket holders.

But even ticket-holders could not be sure of inclusion. Though she had a ticket, African-American independent Presidential candidate, Dr. Lenora Fulani, was refused entry by the New York City police at the direct instruction of Mr. Ferrer. When she protested her exclusion, she was manhandled and forcibly thrown against a chain-link fence.

Finally, one of the excluded candidates, Larry Agran, was dragged from the auditorium and arrested when he rose to "respectfully request" that he be included in the debate. Mr. Ferrer allowed this to happen in spite of the fact that the audience loudly cheered Mr. Agran's demand to speak.

To hold a so-called "urban issues debate" in the middle of one of America's poorest and most devastated inner city communities, and then use every means -- including brute force -- to keep that community and leaders who enjoy

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FEDERAL ELECTION COMMISSION
MAY 1 1992

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community support from being able to participate in the dialogue, was cynical and provocative. There were many people protesting this lack of democracy on March 31, and they were met by many police. It is very fortunate that no one was seriously hurt as a result of Mr. Ferrer's stubborn adherence to his party's policy of exclusion.

Such a policy of exclusion impoverishes our national dialogue at the very moment when we are most in need of the ideas and full participation of all our citizens. The Presidential debates must be democratized. There are two bills in Congress, H.R. 791 and S. 2213, that would open at least some general election debates to qualified "minor" candidates. The two bills encourage the "major" candidates to participate in such inclusive debates by denying them public campaign financing if they failed to do so. If passed, these two bills would guarantee the electorate at least two or three fair and democratic Presidential debates.

by Deborah Green, Political Director, Rainbow Lobby, Inc.

93040983634



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 6, 1992

Arthur R. Block, Esq.
250 West 57th Street
Suite 317
New York, New York 10019

RE: MUR 3506

Dear Mr. Block:

This letter acknowledges receipt on May 4, 1992, of the supplement to the complaint you filed on April 17, 1992 against Fernando Ferrer personally, and as President of the Borough of the Bronx; The City of New York; Ricardo Fernandez, as President of Lehman College; Lehman College; William J. Clinton; Clinton for President Committee and Robert A. Farmer, as treasurer; Edmund G. Brown, Jr.; and Brown for President and Blaine Quick, as treasurer. The respondents will be sent copies of the supplement. You will be notified as soon as the Federal Election Commission takes final action on your complaint.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dawn M. Odrowski", is written above the typed name.

Dawn M. Odrowski
Attorney

93040983635



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 6, 1992

Peter Sherwood, Corporation Counsel
City of New York
100 Church Street
New York, New York 10007

RE: MUR 3506
City of New York

Dear Mr. Sherwood:

On April 24, 1992, you were notified that the Federal Election Commission received a complaint filed on behalf of Lawrence A. Agran, Eugene McCarthy, Lenora B. Fulani and Rafael Mendez, alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On May 4, 1992, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

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

Sincerely,

Dawn M. Odrowski
Dawn M. Odrowski
Attorney

Enclosure

cc: Honorable David Dinkins
Office of the Mayor
City Hall
New York, New York 10007

9304098366



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 6, 1992

Fernando Ferrer, President
Borough of the Bronx
851 Grand Concourse
Bronx, New York 10451

RE: 3506
Fernando Ferrer personally
and as President of
the Borough of the Bronx

Dear Mr. Ferrer:

On April 24, 1992, you were notified that the Federal Election Commission received a complaint filed on behalf of Lawrence A. Agran, Eugene McCarthy, Lenora B. Fulani and Rafael Mendez, alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On May 4, 1992, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

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

Sincerely,

Dawn M. Odrowski
Dawn M. Odrowski
Attorney

Enclosure

cc: Terry Blank, Esq.
Counsel for the Office of
Bronx Borough President
851 Grand Concourse
Third Floor
Bronx, New York 10451

93040983637



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 6, 1992

Robert A. Farmer, Treasurer
Clinton for President Committee
P. O. Box 615
Little Rock, Arkansas 72203

RE: MUR 3506
Clinton for President Committee
and
Robert A. Farmer, as treasurer

Dear Mr. Farmer:

On April 24, 1992, you were notified that the Federal Election Commission received a complaint filed on behalf of Lawrence A. Agran, Eugene McCarthy, Lenora B. Fulani and Rafael Mendez, alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On May 4, 1992, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

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

Sincerely,

Dawn M. Odrowski
Dawn M. Odrowski
Attorney

Enclosure

93040983638



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 6, 1992

The Honorable William J. Clinton
1800 Center Street
Little Rock, Arkansas 72206

RE: MUR 3506
William J. Clinton

Dear Governor Clinton:

On April 24, 1992, you were notified that the Federal Election Commission received a complaint filed on behalf of Lawrence A. Agran, Eugene McCarthy, Lenora B. Fulani and Rafael Mendez, alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On May 4, 1992, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Dawn M. Odrowski", is written above the typed name.

Dawn M. Odrowski
Attorney

Enclosure

93040983639



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 6, 1992

Blaine Quick, Treasurer
Brown for President
2121 Cloverfield Boulevard
Suite 120
Santa Monica, California 90404

RE: MUR 3506
Brown for President and
Blaine Quick, as treasurer

Dear Mr. Quick:

On April 24, 1992, you were notified that the Federal Election Commission received a complaint filed on behalf of Lawrence A. Agran, Eugene McCarthy, Lenora B. Fulani and Rafael Mendez, alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On May 4, 1992, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

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

Sincerely,

[Handwritten signature]
Dawn M. Odrowski
Attorney

Enclosure

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 6, 1992

Edmund G. Brown, Jr.
3022 Washington Street
San Francisco, California 94115

RE: MUR 3506
Edmund G. Brown, Jr.

Dear Mr. Brown:

On April 24, 1992, you were notified that the Federal Election Commission received a complaint filed on behalf of Lawrence A. Agran, Eugene McCarthy, Lenora B. Fulani and Rafael Mendez, alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On May 4, 1992, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

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

Sincerely,

Dawn M. Odrowski
Dawn M. Odrowski
Attorney

Enclosure

93040983641



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 6, 1992

Dr. Richard Fernandez
President
Herbert H. Lehman College
250 Bedford Park Boulevard, West
Bronx, New York 10468

RE: MUR 3506
Herbert J. Lehman College and
Richard Fernandez, as president

Dear Dr. Fernandez:

On April 24, 1992, you were notified that the Federal Election Commission received a complaint filed on behalf of Lawrence A. Agran, Eugene McCarthy, Lenora B. Fulani and Rafael Mendez, alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On May 4, 1992, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Dawn M. Odrowski", is written above the typed name.

Dawn M. Odrowski
Attorney

Enclosure

93040983642

Bill Clinton
FOR PRESIDENT COMMITTEE

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May 6, 1992

Ms. Dawn Odrowski
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3506

Dear Ms. Odrowski:

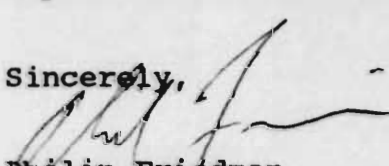
Enclosed please find an executed Statement of Designation of Counsel. In addition to transmitting the Designation of Counsel form, this letter is to confirm our telephone conversation in which I requested on behalf of the Clinton for President Committee ("Committee") an extension of time to file a responsive brief in the above referenced matter.

As the allegations concern events that took place in New York several weeks ago and the individuals with the most knowledge of the events described in the complaint are currently involved in timely tasks relevant to the ongoing presidential campaign, the Committee needs additional time to inspect its records and to interview appropriate campaign personnel.

Accordingly, the Committee requests an additional 20 days over the 15 days in which the Committee is required to file a responsive brief. As the General Counsel of the Committee did not receive the Commission's letter from Little Rock, Arkansas until Friday, May 1, we respectfully request an extension of time to June 4, 1992.

We appreciate your cooperation and understanding in granting us this extension.

Sincerely,


Philip Friedman
Deputy General Counsel

Enclosure

cc: Tony Harrington
Christine Varney

STATEMENT OF DESIGNATION OF COUNSEL

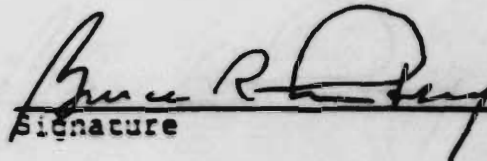
MUR 3506

NAME OF COUNSEL: Mr. Philip S. Friedman, Esq.
888 16th Street, N.W. Suite 300
ADDRESS: Washington, D.C. 20006

TELEPHONE: (202) 296-8600

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.

5/7/92
Date

 -Asst. Treasurer
Signature

RESPONDENT'S NAME: Clinton for President Committee
P.O. Box 615
ADDRESS: Little Rock, Arkansas 72203

N/A
HOME PHONE:
BUSINESS PHONE: (501) 372-1992

Note: Additional Counsel Designated to this matter are:

Mr. Tony Harrington, Esq. General Counsel
Ms. Christine Varney, Esq. Chief Counsel

All correspondence, however, should be directed to
Mr. Friedman at the address listed above.

93040983644



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 12, 1992

Mr. Phillip S. Friedman, Esq.
Deputy General Counsel
888 16th Street, N.W., Suite 300
Washington, D.C. 20006

RE: MUR 3506
Clinton for President
Committee and Robert A.
Farmer, as treasurer, and
the Honorable William J.
Clinton

Dear Mr. Friedman:

This is in response to your letter dated May 6, 1992, which we received on May 8, requesting an extension until June 4, 1992, to respond to the complaint filed against your clients, Clinton for President Committee and Robert A. Farmer, as treasurer, and the Honorable William J. Clinton. 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 June 4, 1992.

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

Sincerely,

Dawn M. Odrowski

Dawn M. Odrowski
Attorney

93040983645

PARKER CHAPIN FLATTAU & KLIMPL
COUNSELLORS AT LAW

1211 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

(212) 704-6000

CABLE LAWPARK

TELECOPIER (212) 704-6288

TELEX 640347

100 JERICHO QUADRANGLE

JERICO, NY 11753

(516) 932-6500

TELECOPIER (516) 932-6506

KAREN F. LEDERER

(212) 704-6319

May 8, 1992

VIA TELECOPIER

Dawn Odrowski, Esq.
Federal Election Commission
Washington, D.C. 20463

Re: MUR 3506

Dear Ms. Odrowski:

Pursuant to my telephone conversation with you earlier today, I hereby request, on behalf of my clients Lehman College and Ricardo Fernandez, President of Lehman College, an extension of time to response to the Complaint to and including June 2, 1992. My clients received the Complaint on or about April 28, 1992. Thus, the extension I am requesting amounts to twenty days.

The reason for the requested extension is that I was retained to handle the matter only yesterday. My clients had expected to be represented in this matter by the New York State Attorney General's Office, and were only informed yesterday that that would not be the case.

Please call me immediately if you foresee any problem with the requested extension.

Thank you for your consideration.

Very truly yours

Karen F. Lederer

Karen F. Lederer

KFL/lc

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FEDERAL ELECTION COMMISSION
OFFICE OF LEGAL COUNSEL

STATEMENT OF DESIGNATION OF COUNSEL

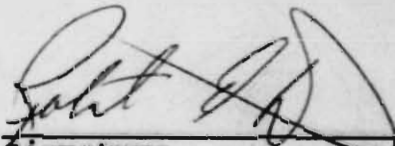
MUR 3506

NAME OF COUNSEL: Charles P. Greenman/Karen F. Lederer
c/o Parker Chapin Flattau & Klimpl
1211 Avenue of the Americas
New York, New York 10036

TELEPHONE: (212) 704-6000

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.

5/8/92
Date


Signature
ROBERT E. DIAZ
General Counsel and Vice Chancellor
for Legal Affairs

RESPONDENT'S NAME: Lehman College

ADDRESS: c/o Office of the General Counsel
535 East 80th Street
New York, New York 10021

HOME PHONE: (914) 428-4982

BUSINESS PHONE: (212) 794-5430

93040983647

PARKER CHAPIN FLATTAU & KLIMPL
COUNSELLORS AT LAW

221 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

(212) 704-8000

CABLE LAWPAK

TELECOPIER (212) 704-8000

TELEX 940347

KAREN F. LEDERER
(212) 704-8310

100 JERICHO QUADRANGLE
JERICHO, NY 11753
(516) 932-8800
TELECOPIER (516) 932-8800

May 8, 1992

BY TELECOPY

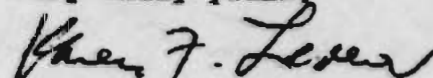
Dawn Odrowski, Esq.
Federal Election Commission
Washington, D.C. 20463

Re: MUR 3506

Dear Ms. Odrowski:

Enclosed please find the Designation of Counsel by
Ricardo Fernandez, President of Lehman College.

Very truly yours,



Karen F. Lederer

KFL:mr
Enclosure

TEL:

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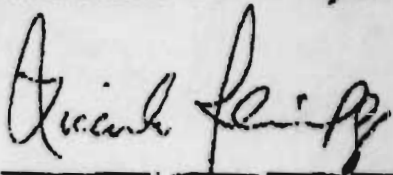
STATEMENT OF DESIGNATION OF COUNSEL

MUR 3506

NAME OF COUNSEL: Charles P. Greenman/Karen E. Lederer
c/o Parker Chaulin Klattau & Klimm
1211 Avenue of the Americas
New York, New York 10036
TELEPHONE: (212) 754-6000

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.

8 May 1992
Date


Signature
Ricardo Fernandez
President

RESPONDENT'S NAME: Ricardo Fernandez, President of Lehman College
ADDRESS: Bedford Park Blvd, West
Bronx, New York 10468
HOME PHONE: _____
BUSINESS PHONE: (212) 960-2111

93040983649



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 12, 1992

Ms. Karen F. Lederer, Esq.
Parker, Chapin, Flattau & Klimpl
1211 Avenue of the Americas
New York, N.Y. 10036

RE: MUR 3506
Lehman College and Ricardo
Fernandez, President
of Lehman College

Dear Ms. Lederer:

This is in response to your letter dated May 8, 1992, which we received on that date, requesting an extension until June 2, 1992, to respond to the complaint filed against your clients, Lehman College and Ricardo Fernandez, President of Lehman College. 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 June 2, 1992.

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

Sincerely,

Dawn M. Odrowski

Dawn M. Odrowski
Attorney

cc: Robert Diaz, Esq.
Office of the Vice Chancellor for
Legal Affairs - CUNY
535 East 80th St.
New York, N.Y. 10021

93040983650

LEHMAN

LEHMAN COLLEGE • THE CITY UNIVERSITY OF NEW YORK
250 Bedford Park Boulevard West • Bronx, NY 10468-1589

Office of the Director of Administrative Services • (212) 960-8760

May 5, 1992

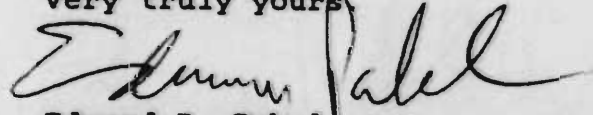
Lisa E. Klein, Esq.
Assistant General Counsel
Federal Election Commission
Washington, D.C. 20463

RE: MUR 3506

Dear Ms. Klein:

Please find enclosed the STATEMENT OF DESIGNATION OF COUNSEL relative to the above referenced matter. A representative of that office will communicate with your office.

Very truly yours,



Edward D. Pakel
Director of Administrative
Services

EDP:jm
Enc.

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 3506

NAME OF COUNSEL: Robert Diaz, Esq.

ADDRESS: Office of the Vice Chancellor for Legal Affairs
CUNY
535 East 80th Street
New York, New York 10021

TELEPHONE: (212) 794-5430

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.

5 May 1992
Date

Quarobol. Scitp
Signature

RESPONDENT'S NAME:

Dr. Ricardo Fernandez

ADDRESS:

Herbert H. Lehman College

The City University of New York
Bedford Park Blvd. West

Bronx, New York 10468

HOME PHONE:

(212) 543-9410

BUSINESS PHONE:

(212) 960-8111

93040983652

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COMMISSION
MAIL ROOM

LAW OFFICES OF
OXMAN AND JAROSCH
14126 EAST ROSECRANS BOULEVARD
SANTA FE SPRINGS, CALIFORNIA 90670
(213) 921-5058
TELECOPIER (213) 921-2298

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

May 7, 1992

Office of the General Counsel
Federal Election Commission
999 East Street, N.W.
Washington, D.C. 20463

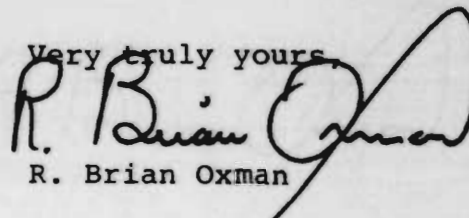
Re: Agran v. Ferrer, Federal Election Commission
Case No. MUR 3506

Dear Sirs:

Enclosed is Governor Brown's and the Brown for President Campaign's Response to Complaint and a copy of the cover sheet of the Response. Please file the original with your office. Conform the copy of the cover sheet and return it to us in the enclsloed reply envelope.

Please notify us if we can be of further assistance to you.

Very truly yours,


R. Brian Oxman

RBO:ma
Enclosure

93040983653

1 R. Brian Oxman
2 Maureen Jaroscak
3 14126 East Rosecrans Boulevard
4 Santa Fe Springs, California 90670
5 (310) 921-5058 or (310) 921-7881

6 Attorneys for Respondents,
7 Governor Edmund G. Brown, Jr., and
8 the Brown For President Campaign

9 BEFORE THE FEDERAL ELECTION COMMISSION
10 UNITED STATES OF AMERICA

11 LAWRENCE A. AGRAN, EUGENE J.) Case No. MUR 3506
12 MCCARTHY, LENORA B. FULANI, AND)
13 RAPHAEL MENDEZ,)
14) GOVERNOR BROWN'S AND THE BROWN
15) FOR PRESIDENT CAMPAIGN'S
16) RESPONSE TO COMPLAINT
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I.

INTRODUCTION

Respondents, Governor Edmund G. Brown, Jr., and the Brown for President Campaign submit the following response to the complaint filed by complainants, Lawrence A. Agran, Eugene J. McCarthy, Lenora B. Fulani, and Raphael Mendez. Governor Brown's and the Brown Campaign's response is based on the following:

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1 (1) Neither Lehman College nor the Bronx Borough made a
2 contribution or expenditure on behalf of Governor Brown and the
3 March 31, 1992, debate was properly staged by bona fide broad-
4 casters under 11 C.F.R. section 114.4(e) (2);

5 (2) Lehman College is part of the City University of New
6 York which is owned and operated by the State of New York and as
7 an arm of the State of New York it is neither a person nor a
8 corporation subject to the Federal Election Campaigns Act, 2
9 U.S.C § 431 et seq.;

10 (3) The Bronx Borough, a municipal corporation, properly
11 assisted the State of New York's efforts under 11 C.F.R. section
12 114.4(c) to inform its electorate concerning urban issues.

13 A. Statement of the Case.

14 1. The complaint.

15 Complainants filed this action on April 17, 1992, claiming
16 Democratic presidential candidate Governor Edmund G. Brown, Jr.
17 and the Brown Campaign violated 2 U.S.C. section 441b(a) and 11
18 C.F.R. sections 110.13 and 114.4(e) (3) by engaging in a public
19 debate with Democratic presidential candidate Governor William J.
20 Clinton at Lehman College in New York City on March 31, 1992.
21 Complainants allege the debate constituted an unlawful corporate
22 campaign contribution under section 441b(a) because the debate
23 was sponsored by the City of New York through the Office of the
24 Bronx Borough President and by Lehman College, which is part of
25 the City University of New York. While the debate was properly
26 staged by television stations WABC Channel 7 and WNJU Channel 47
27 under 11 C.F.R. 114.4(e) (2), complainants allege the the "real
28 sponsors" of the debate were Lehman College, where the debate was

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1 held, and the Bronx Borough, which made a news release for the
2 debate, both of which are purportedly "municipal corporations"
3 prohibited from making "unspecified" contributions to facilitate
4 the debate.

5 2. The debate.

6 On March 9, 1992, respondent Fernando Ferrer, the President
7 of the Bronx, issued a news release announcing President Ferrer
8 and Lehman College President Ricardo Fernandez would sponsor and
9 serve as moderators of the 1992's "The Debate for Urban America"
10 at Lehman College's Center for the Performing Arts on March 31,
11 1992. The debate was to be telecast by the American Broadcasting
12 Company's New York affiliate television station WABC Channel 7,
13 and by the Spanish language New York television station WNJU
14 Channel 47. The news release stated candidates from both parties
15 were invited and all major candidates for the Democratic Party's
16 presidential nomination would be participating.

17 Complainants allege that while there were four (4) active
18 candidates for the Democratic Party's presidential nomination who
19 were on the New York State ballot for the April 7, 1992,
20 election, Bronx President Ferrer invited only Governors Brown and
21 Clinton to the debate. The other two candidates, complainant
22 Agran, a former Mayor of Irvine, California, and complainant
23 McCarthy, a former United States Senator from Minnesota, received
24 no invitations. Complainants argue the failure to invite the
25 other candidates constituted an improper corporate expenditure in
26 violation of 2 U.S.C. section 441b.

27 Complainant Fulani, who is a former candidate for the
28 Democratic presidential nomination and now an independent

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1 candidate for President, complains she was denied access to the
2 debate on March 31, 1992, because the police stopped the line of
3 persons seeking admission to the auditorium at Lehman College for
4 the purpose of preventing her from entering the auditorium.
5 Complainants allege "upon information and belief" the police
6 acted at the instructions of Bronx President Ferrer to exclude
7 complainant Fulani despite the fact three (3) police officers
8 received injuries when a large crowd stormed the auditorium gate
9 occasioning approximately 500 police officers, some in riot gear
10 and on Horseback, to close the event. See Complaint Exhibit "D."
11 Complaints further allege complainant Agran was improperly and
12 forcibly ejected by the police from the auditorium when he
13 requested inclusion in the debate despite the fact he interrupted
14 the debate while it was in progress and was arrested by police
15 for disorderly conduct, trespassing, and resisting arrest.

16 3. Complainants' allegations.

17 Complainants¹ allege Governor Brown is guilty of violating 2
18 U.S.C. section 441b(a) because he received an unlawful corporate
19 contribution from the Bronx Borough and Lehman College when
20 Governor Brown participated in the debate. Complainants argue
21 the Bronx Borough and Lehman College are "municipal corporations"
22 prohibited from making any expenditure or contribution on behalf
23 of a candidate for federal office. Just what expenditure Lehman
24 College and the Bronx Borough made in connection with the debate
25

26 1. Complainants include Rafael Mendez, a candidate for the
27 New York City Council in the Bronx and a "leader" of the New
28 Alliance Party. Just what his standing is in this complaint is
never specified nor is it specified in what manner he is
aggrieved by the March 31, 1992, debate.

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1 and just what "express advocacy" of the election of a candidate
2 for a federal office they made are never identified in the
3 complaint.

4 Complainants allege Governor Brown violated regulations
5 issued by the Federal Election Commission contained in 11 C.F.R.
6 section 114.4(e) which provides for nonprofit corporations to
7 sponsor nonpartisan candidate debates. They claim that while
8 Lehman College is a nonprofit corporation who can sponsor such an
9 event, the participation of Bronx President Ferrer tainted the
10 event rendering it an unlawful corporate contribution of Lehman
11 College resources. Complainants further claim the event was not
12 organized in a nonpartisan manner because complainants were
13 excluded from the debate.

14 B. Basis for Governor Brown's Request the Commission Take
15 No Action on the Complaint.

16 Governor Brown and the Brown Campaign request the Federal
17 Election Commission take no action concerning the complaint
18 because there has been no violation of either the Federal
19 Election Campaign Act, 2 U.S.C. sections 431 et. seq. or regu-
20 lations issued by the Federal Election Commission, 11 C.F.R.
21 section 100 et seq. There was no expenditure by a corporation,
22 municipal or otherwise, expressly advocating the election or
23 defeat of a candidate for public office and neither Governor
24 Brown nor the Brown Campaign received any contribution from a
25 corporation or the State or City of New York. Governor Brown was
26 invited by an educational institution to engage in a public
27 debate at a University located in the Bronx, Lehman College,
28 where he and his campaign received nothing in return and none of

1 the moderators, questioning mayors, or sponsoring college and
2 Bronx Presidents advocated the election or defeat of a candidate.

3 The March 31, 1992, debate was in reality staged and spon-
4 sored by television stations WABC Channel 7 and WNJU Channel 47,
5 the latter of which expended \$3,000.00 to defray the costs of the
6 debate. Under 11 C.F.R. section 114.4(e)(2) a bona fide broad-
7 caster may stage a candidate debate and the debate at Lehman
8 College was staged by and for the benefit of these television
9 stations. Governor Brown participated in the debate which was
10 paid for by WNJU Channel 47, a bona fide broadcaster, and held at
11 a campus of the City University of New York only because of the
12 appearance the debate was properly staged with the assistance of
13 the State of New York to inform its electorate.

14 Lehman College is not a "municipal corporation." It is an
15 arm of the State of New York as one of the Universities compris-
16 ing the City University of New York. As an arm of the state of
17 New York neither 4 U.S.C. section 441B nor 11 C.F.R. section
18 114.4(e) have any application to it. Because Lehman College
19 could not and did not violate these rules and regulations, no
20 unlawful campaign expenditure, campaign contribution, or improper
21 debate took place at Lehman College and Governor Brown properly
22 participated in a debate sponsored by the State of New York to
23 inform its electorate of the issues before the electorate.

24 If Lehman College is somehow a "municipal corporation" then
25 under 11 C.F.R. section 114.4(e) it is a "Corporation ...
26 organized and operated exclusively for ... educational purposes
27 ..." within the meaning of Internal Revenue Code section
28 501(c)(3). Under 11 C.F.R. section 110.13(a)(1), it may organize

1 and stage a nonpartician debate of the type held on March 31,
2 1992. Under 11 C.F.R. section 114.4(a)(1), such a organization
3 may accept funds donated by a corporation, such as the municipal
4 corporation of the Bronx Borough, to defray costs incurred in
5 staging the candidate debate.

6 II.

7 NEITHER LEHMAN COLLEGE NOR THE BRONX BOROUGH MADE A CONTRIBUTION
8 OR EXPENDITURE ON BEHALF OF GOVERNOR BROWN AND THE DEBATE
9 WAS STAGED BY BONA FIDE BROADCASTERS

10 A. Governor Brown Received No Contribution from Any Source.

11 Governor Brown did not receive a contribution from any of
12 the parties involve in the March 31, 1992, debate. He received
13 no payment, distribution, loan, advance, deposit, or gift of
14 money, and no service or anything of value was given to him or
15 his campaign. Governor Brown made an appearance at a debate
16 sponsored by bona fide broadcaster and an agency of the State of
17 New York, and he received no remuneration of any kind from any
18 source.

19 4 U.S.C. section 431(8) provides:

20 "(A) The term "contribution" includes --

21 (i) any gift, subscription, loan, advance, or
22 deposit of money or anything of value by any person for the
23 purpose of influencing any election for Federal office; or

24 (ii) the payment by any person of compensation
25 for the personal services of another person which are
26 rendered to a political committee without charge for any
27 purpose."

28 Regulations issued by the Federal Election Commission

1 include substantially similar definitions of "contributions." 11
2 C.F.R. section 114.1(a) provides:

3 "(1) The term contribution or expenditure shall
4 include any direct or indirect payment, distribution, loan,
5 advance, deposit, or gift of money, or any service, or
6 anything of value ... to any candidate, political party or
7 committee, organization, or other person in connection with
8 any election to any office referred to in § 114.2(a) or (b)
9 as applicable.

10 "(2) The term contribution and expenditure shall not
11 include --

12 "(i) Communications by a corporation to its
13 stockholders and executives or any administrative personnel
14 and their families or by a labor organization to its members
15 and executives or administrative personnel, and their
16 families, on any subject."

17 Neither Lehman College nor the Bronx Borough and none of
18 their representatives or officers made any "contribution" to
19 Governor Brown of any kind. Nothing of value was given to
20 Governor Brown and the provision of a platform from which he
21 spoke and debated with Governor Clinton has never been construed
22 as a contribution of anything of value "for the purpose of
23 influencing any election for Federal office."

24 For a contribution to be unlawful it must have a real and
25 actual impact on a candidate for the purpose of influencing any
26 election for Federal office. Federal Election Commission v. Ted
27 Haley Congressional Comm., 852 F.2d 1111, 1115-16 (9th Cir.
28 1988). The candidate must receive something of value from an

1 unlawful contributor for the purpose of influencing that candi-
2 date's election. Federal Election Commission v. California
3 Medical Assn'n, 502 F.2d 196, 200-02 (N.D. Cal. 1980). Contri-
4 butions must be given to the candidate and be of actual value in
5 order to influence an election for federal office. Federal
6 Election Commission v. Lance, 617 F.2d 365, 374 (5th Cir. 1980),
7 cert. denied, 453 U.S. 917 (1981).

8 Governor Brown received nothing of value from any of the
9 participants, sponsors, or organizers of the March 31, 1992,
10 debate. No money, services, loans, gifts, or anything of value
11 went to him or to the Brown Campaign and none of the \$3,000.00
12 expended by television station WNJU Channel 47 to pay for the
13 cost of ticket printing and miscellaneous expenses went to the
14 Brown Campaign. Governor Brown accepted an invitation to debate
15 at a New York State run college campus which was broadcast to the
16 public by bona fide broadcasters and he received no contribution
17 to his campaign in connection with that debate.

18 B. No Corporate Independent Expenditures were Made.

19 None of the organizers, sponsors, or other moderators in the
20 March 31, 1992, debate advocated the election or defeat of any
21 candidate for federal office. If corporate independent expendi-
22 tures were made, and Governor Brown can find no evidence of any
23 such expenditures, the expenditures did not provide anything of
24 value for the purpose of influencing an election for a federal
25 office. The March 31, 1992, debate at Lehman College endorsed no
26 candidate, advocated the election of no candidate, and was
27 nothing more than an open debate by the candidates on their own
28 views and their own electioneering messages.

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1 Sections 442b(a) of the Federal Election Campaigns Act
2 provides it is unlawful for any corporation to make a contribu-
3 tion or expenditure in connection with any election to any
4 political office. Section 441b(2) defines "contribution or
5 expenditure" as the provision of things of value "to any candi-
6 date, campaign committee, or political party or organization, in
7 connection with any election" Section 431(17) defines
8 "independent expenditure" to mean

9 "an expenditure by a person expressly advocating the
10 election or defeat of a clearly identified candidate which
11 is made without cooperation or consultation with any candi-
12 date, or any authorized committee or agent of such
13 candidate, and which is not made in connection with, or at
14 the request or suggestion of, any candidate, or any
15 authorized committee or agent of such candidate."

16 In Federal Election Commission v. Massachusetts Citizens for
17 Life, Inc., 479 U.S. 238 (1986), the Supreme court stated the
18 "general definitions section of the Act contains a broader
19 definition of "expenditure," including the provision of anything
20 of value made "for the purpose of influencing any election for
21 Federal office...." 2 U.S.C. § 431(9) (A) (i). The Court resolved
22 a prior conflict between the courts and the FEC over whether "in
23 connection with" superseded section 431's language "for the
24 purpose of influencing." The Court reviewed Congress' intent
25 that corporate funds should not be used to influence the public
26 at large to vote for a particular candidate or for a particular
27 party. Id. at 247, citing United States v. Automobile Workers,
28 352 U.S. 567, 589 (1957). The "in connection with" language

1 denotes a general class of payments that are prohibited if made
2 with the intent to influence a federal election. The expenditure
3 must constitute "express advocacy" in order to be subject to the
4 prohibition of section 441b. Id. at 249. The "express advocacy"
5 of a candidate is designed to distinguish discussions of issues
6 and candidates from more pointed exhortation to vote for particu-
7 lar persons. Id. at 248-49.

8 Express advocacy of a candidate does not involve issue
9 discussions because of strong First Amendment implications.
10 Federal Election Commission v. Furgatch, 807 F.2d 857, 860 (9th
11 Cir. 1987). There must be a direct and explicit exhortation to
12 elect or defeat a candidate for public office for an independent
13 expenditure to exist and the general discussion of a political
14 view does not constitute such express advocacy. Federal Election
15 Commission v. Central Long Island Tax Reform Immediately, 616
16 F.2d 45, 53 (2d Cir. 1980). In Federal Election Commission v.
17 NOW, 713 F. Supp. 426, 433-34 (D.D.C. 1989), the court stated:

18 "Express advocacy" as defined by the Court in Buckley
19 [v. Valeo, 424 U.S. 1 (1976)] and reiterated in MCFL [Federal
20 Election Commission v. Massachusetts Citizens for Life,
21 497 U.S. 238 (1986)], consists of words or expressions of
22 advocacy of election or defeat, such as 'vote for,' 'elect,'
23 'support,' 'cast your ballot for,' 'Smith for Congress,'
24 'vote against,' 'defeat,' or 'reject.'" Buckley 424 U.S.. at
25 44 n. 52; 96 S.Ct. at 647 n. 52. See also, MCFL, 497 U.S.
26 at 249, 107 S.Ct. at 623; 11 C.F.R. § 109.1(b)(2). An
27 explicit and unambiguous reference to the candidate must be
28 mentioned in the communication in order for express advocacy

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1 to be present. In Buckley, the Court agreed that funds
2 spend to propagate one's views on issues without expressly
3 calling for the election or defeat of a clearly identified
4 candidate are not covered by FECA. 424 U.S. at 43-44, 96
5 S.Ct. at 646-47."

6 Neither Lehman College, President Fernandez, the Bronx
7 Borough, nor President Ferrer expressly advocated the election or
8 defeat of any candidate for any office. The debate entitled "The
9 Debate for Urban America" and Mayor Dinkins and 12 other mayors
10 asked questions of the candidates about urban issues without any
11 of the organizers, sponsors, or moderators advocating,
12 electioneering, or suggesting one candidate was better or worse
13 than the other. The fact not all candidates for President were
14 present at the debate did not create an illegal expenditure and
15 did not constitute "express advocacy" of a candidate for office.
16 The March 31, 1992, debate was a political discussion of issues
17 in the tradition of our "profound national commitment to the
18 principle that debate on public issues should be uninhibited,
19 robust, and wide-open." New York Times Co. v. Sullivan, 376 U.S.
20 254, 270 (1964).

21 C. The Debate was Staged by Bona Fide Broadcasters.

22 The debate between Governor Brown and Governor Clinton was
23 staged by the American Broadcasting Corporation New York affili-
24 ate television station WABC Channel 7 and the New York Spanish
25 language television station WNJU Channel 47. These television
26 stations broadcast the debate to all of New York State and many
27 other states and outlying areas in accordance with 11 C.F.R.
28 section 110.12(a)(2). The debate was a legitimate undertaking of

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1 these television stations under section 110.12(a)(2) and it is an
2 academic debate of the worst order to suggest that Lehman College
3 or the Bronx Borough were actually the sponsor instead of the
4 broadcasters who broadcast the debate to millions of persons.

5 11 C.F.R. section 110.13(a)(2) provides:

6 "Broadcasters, bona fide newspapers, magazines and
7 other periodical publications may stage nonpartisan
8 candidate debates in accordance with 11 CFR 110.13(b) and
9 114.4(e)."

10 Neither Lehman College nor the Bronx Borough made any
11 expenditures of money in connection with the debate where tele-
12 vision station WNJU expended \$3,000.00 to print tickets and
13 defray costs. If there was any sponsoring entity it was the two
14 (2) television stations who broadcast the debate to millions of
15 viewers. The debate was a legitimate broadcasting activity under
16 11 C.F.R. section 110.13(a)(2). Austin v. Michigan Chamber of
17 Commerce, 494 U.S. 652, 666-67 (1990).

18 III.

19 LEHMAN COLLEGE IS AN ARM OF THE STATE OF NEW YORK NOT SUBJECT
20 TO THE FEDERAL ELECTION CAMPAIGN ACT

21 A. Lehman College is An Arm of the State of New York.

22 Lehman College is not a municipal corporation and is not
23 governed by the provisions of 2 U.S.C section 441b. Lehman
24 College is a part of the City University of New York, which is an
25 arm of the State of New York. Nothing in section 441b purports
26 to regulate the activities of a state government or any of its
27 officials, and state governments are free to organize a debate
28 among candidates for public office in the same manner Governors

1 Brown and Clinton debated on March 31, 1992.

2 Lehman College is part of the City University of New York
3 which was established by the State of New York as an arm of the
4 State pursuant to Education Law section 6201 et seq. N.Y. Educ.
5 Law § 6201 et seq. (McKinney 1985). It is governed by a Board of
6 Trustees consisting of 17 members, ten (10) of whom are appointed
7 by the Governor and five (5) of whom are appointed by New York
8 City Mayor, both with the consent of the State Senate. Id. §
9 6204. The State of New York holds the Board of Trustees harmless
10 against all civil suits. Id. § 6205.

11 The Chancellor of the City University of New York submits his
12 budget requests for all senior collages to the State Director of
13 the Budget. Id. § 6230. In 1986 the City University of New York
14 had total revenues of \$43,114,000.00, of which \$30,895,000.00
15 came from state appropriations and \$10,420,000.00 coming from
16 student tuition. The City of New York contributed only
17 \$1,001,000.00 to the University's total budget. It is a state
18 owned and operated university.

19 B. Lehman Collage is Not a Municipal Corporation.

20 The City University of New York is an arm of the State of
21 New York and it is not a "person" nor a "corporation" within the
22 meaning of the Act. See Will v. Michigan Dept. of St. Police,
23 109 S.Ct. 2304, 2309 (1989). It is not a municipal corporation
24 within the meaning of 2 U.S.C. section 441b. A county is a
25 municipal corporation. Matter of Westchester County, 158 N.E.
26 881 (1927). The term "municipal corporation" includes a city or
27 its agencies. City of Little Falls v. State, 41 N.Y.S2d 882
28 (N.Y. App. 1943), aff'd 52 N.E. 2d 963 (1944).

1 Section 2 of the New York General Municipal Law provides:

2 "The term 'municipal corporation,' as used in this
3 chapter, includes only a county, town, city and village."
4 (N.Y. Gen. Municipal Law § 2 (McKenney's 1986)).

5 Because Lehman College is not a "municipal corporation" both
6 the City University of New York and Lehman College's President,
7 Ricardo Fernandez, violated nothing prohibited in 2 U.S.C section
8 441b. They are arms of the State of New York and because of
9 complex questions of Eleventh Amendment immunity, before the
10 provisions of section 441b are applied to States and their
11 officials a clear intention to apply such rules to the State
12 should be present. Dellmuth v. Muth, 109 S.Ct. 2397, 2401-02
13 (1989). No such intention either express or implied is indicated
14 in section 441b and neither Lehman College, the City University
15 of New York, or Ricardo Fernandez violated any provision of
16 section 441b.

17 C. The Debate was Justified by New York's Compelling
18 Interest to Inform its Electorate

19 Because Lehman College is an arm of the State of New York
20 the debate held on Lehman College's campus cannot be construed as
21 unlawful in any manner. Governor Brown's participation in the
22 debate did not constitute participation in a corporate contribu-
23 tion because no corporation was involved, let alone a contribu-
24 tion. The debate was an activity sponsored and promoted by the
25 State of New York to meet a legitimate interest in fostering an
26 informed electorate. Eu v. San Francisco Democratic Central
27 Committee, 109 S.Ct. 1013, 1023 (1989).

28 In Anderson v. Celebrezze, 460 U.S. 780, 797 (1983), the

1 Court stated:

2 "There can be no question about the legitimacy of the
3 State's interest in fostering informed and educated ex-
4 pressions of the popular will in a general election."

5 While nothing in the Federal Election Campaigns Act or the
6 regulations promulgated in by the Federal Election Commission
7 authorize a state agency to sponsor a debate among candidates,
8 there is nothing in these rules and regulations which prohibit
9 such activity. More important, it is not at all certain the
10 Federal Election Commission would have constitutional power to
11 force the State of New York to give up or modify its activity of
12 holding candidate debates to inform its electorate of election
13 issues which are at the core of First Amendment protections.
14 Governor Brown was invited by the State of New York to engage in
15 a state organized debate and he certainly had no possible notice
16 or knowledge that anything was wrong or improper in the State of
17 New York's activities.

18 IV.

19 THE BRONX BOROUGH PROPERLY ASSISTED THE STATE OF NEW YORK'S
20 EFFORT TO INFORM ITS ELECTORATE

21 A. The Bronx Borough is a Municipal Corporation.

22 Unlike the City University of New York, the Bronx Borough is
23 a "municipal corporation" which is part of the City of New York.
24 In 1874 New York City, which originally consisted of Manhattan
25 Island, annexed the areas of Morrisania, Kingsbridge, and West
26 Farms, which were townships then comprising the entire western
27 portion of the Bronx. The rest of the Borough was absorbed by
28 the City in 1885, with New York City being consolidated with its

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1 adjacent communities on January 1, 1898, by an act of the New
2 York State Legislature.

3 The Bronx is a subdivision of the City of New York which
4 consists of five (5) Boroughs, each of which is coextensive with
5 a county. In order of area, these Boroughs are Queens, which is
6 coextensive with Queens County, Brooklyn, which is coextensive
7 with Kings County, Richmond, which is coextensive with Richmond
8 County, the Bronx, which is coextensive with Bronx County, and
9 Manhattan, which is coextensive with New York County. Each
10 borough is headed by a President and its is Bronx Borough Presi-
11 dent Fernando Ferrer, who is a party to this proceeding.

12 New York City is governed according to provisions of a City
13 Charter adopted in 1961. The Chief Executive is the Mayor who is
14 elected to a four (4) year term. The City's legislative authori-
15 ty is vested in a City Council of 51 members elected to four (4)
16 year terms. The City's administration is conducted by the Board
17 of Estimate, which consists of the Mayor, the Comptroller, the
18 President of the City council, and the Borough Presidents.

19 B. Corporations May Conduct Candidates Appearances.

20 The Federal Election Commission has adopted rules and
21 regulations which allow corporations to invite candidates to
22 speak to its stockholders, executive officers, or administrative
23 personnel, and their families at meetings conventions or other
24 functions of the corporation. 11 C.F.R. § 114.4(c). These rules
25 recognize a corporation's right to inform its shareholders and
26 other interested persons of issues which are important to the
27 corporation. Federal Election Commission v. Massachusetts
28 Citizens for Life, Inc., 479 U.S. 238, 252 (1986). Section

1 114.4(c) provides:

2 "Employees outside the restricted class of the corporation
3 [officers, directors, and family members] or labor orga-
4 nization who are necessary to administer the meeting,
5 limited invited guests and observers, and representatives of
6 the news media may also be present during a candidate or
7 party representative appearance under this section. 11
8 C.F.R. § 114.4(c)

9 The Bronx Borough has no stockholders and its "restricted
10 class of the corporation" constitute the almost 1.2 million
11 inhabitants of the Bronx. The Bronx Borough has a right under
12 section 114.4(c) to engage in activities which are legitimately
13 designed to invite a candidate for public office to a meeting
14 whereby issues important to the "municipal corporation" are
15 addressed by that candidate.

16 C. The Bronx Borough May Defer Costs of the Debate.

17 The Bronx Borough made no monetary expenditures in con-
18 nection with the March 31, 1992, debate between Governor Brown
19 and Governor Clinton. The only alleged action identified in
20 complainant's complaint as having been taken by the Bronx Borough
21 is a press release on March 9, 1992, (Complaint, p. 3 ¶ 9), and a
22 purported instruction from Borough President Fernando Ferrer, who
23 moderated the debate, to close admittance to the debate auditori-
24 um in the face of 500 police controlling a large unruly crowd
25 which injured three (3) policemen, (Complaint p. 4 ¶ 16 and
26 Exhibit "D"). These activities cannot be deemed "expenditures"
27 and any actions taken by the Bronx Borough were within the
28 guidelines and regulations established by the Federal Election

1 Commission.

2 Section 114.4(e)(3) provides:

3 "A corporation or labor organization may donate funds
4 to nonprofit organizations qualified under 11 C.F.R.
5 110.13(a)(1) to stage nonpartisan candidate debates held in
6 accordance with 11 C.F.R. 110.13 and 114.4(e)."

7 Lehman College is not a nonprofit corporation as defined 11
8 C.F.R. section 110.13 only because it is an arm of the State of
9 New York. In the absence of that technical distinction, it would
10 otherwise be an exempt organization under section 110.13 which
11 utilizes the definition of section 501(c) of the Internal Revenue
12 Code, 26 U.S.C. § 501(c)(3). Only because the City University of
13 New York is an arm of the state it falls outside the definition
14 of 26 U.S.C section 501(c)(3) which defines an exempt orga-
15 nization as:

16 "Corporations, and any community chest, fund, or
17 foundation organized and operated exclusively for religious,
18 charitable, scientific, testing for public safety, literary,
19 or educational purposes"

20 However, it is certain that the City University of New York,
21 except for its status as an arm of the State of New York, would
22 otherwise be a corporation organized exclusively for educational
23 purposes and the Bronx Borough's assistance would be appropriate
24 under section 114.4(e)(3). This is a distinction without a
25 difference. It is improper to seek to impose liability on the
26 Bronx Borough for making de minimus assistance to Lehman College
27 in Lehman College's effort to foster the state's legitimate
28 interest of promoting an informed electorate when there is no

1 substantive distinction to be made under 11 C.F.R. section
2 114.4(e)(3). Eu v. San Francisco Democratic Central Committee,
3 109 S.Ct. 1013, 1023 (1989). More important, it is improper to
4 seek to impose liability on Governor Brown when an arm of New
5 York State would otherwise qualify under this exception except
6 for the mysterious internal workings and definitions of New York
7 State government.

8 v.

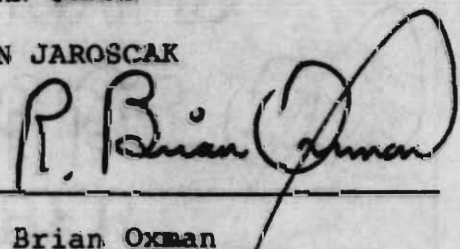
9 CONCLUSION

10 For the foregoing reasons, Governor Edmund G. Brown, Jr.,
11 and the Brown for President Campaign request the Federal Election
12 Commission to take no action on the April 17, 1992, complaint.

13
14 DATED: May 6, 1992

15 R. BRIAN OXMAN

16 MAUREEN JAROSCAK

17
18 By: 

19 R. Brian Oxman
20 Attorneys for respondents
21 Edmund G. Brown and the
22 Brown for President
23 Campaign
24
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27
28

1
2
3 VERIFICATION

4 STATE OF CALIFORNIA)
5) SS.
6 COUNTY OF LOS ANGELES)

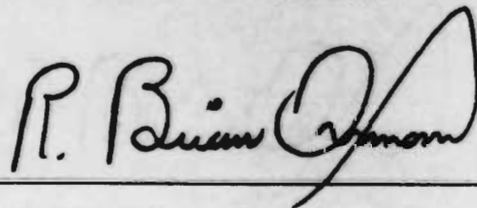
7 I, R. Brian Oxman, declare and say:

8 I am an attorney at law admitted to practice before all the
9 courts of the State of California and I am the attorney for
10 Governor Edmund G. Brown, Jr., and the Brown for President
11 Campaign. I have the permission and consent of the Campaign
12 Manager and Treasurer of the Brown for President Campaign to make
13 this Verification and I make this verification on their behalf.

14 I have read the foregoing Governor Brown's and the Brown
15 Campaign's Response to Complaint and know that it is true of my
16 own knowledge, except as to those matters which are stated on
17 information and belief and as to those matters I believe them to
18 be true.

19 I declare under penalty of perjury under the laws of the
20 State of California the foregoing is true and correct.

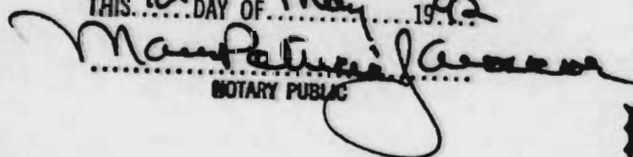
21 Executed this 7th day of May, 1992, at Santa Fe Springs,
22 California.

23
24 

25 R. Brian Oxman

26 SUBSCRIBED AND SWORN TO BEFORE ME

27 THIS 7th DAY OF May 1992

28 
NOTARY PUBLIC



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I, Maureen Jaroscak, declare and say:

GOVERNOR BROWN'S AND THE BROWN FOR PRESIDENT CAMPAIGN'S

on the attorney(s) of record for the interested parties in the above-entitled action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at La Mirada, California, addressed as follows:

Ms. Christene Varney
Counsel for Governor Clinton
555 13th Street N.W.
Washington, D.C. 20004

Mr. David Brulding
New York Corporation Counsel
100 Turk Street
Room 6-F-46
New York, New York 10007

Executed on May 7, 1992, at Santa Fe Springs, California.

Maureen Jaroscak

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COMMISSION
MAIL ROOM**STATEMENT OF DESIGNATION OF COUNSEL**

MAY 18 9 49 AM '92

MUR 3506 Lawrence Agran Complaint

NAME OF COUNSEL: Oxman and JaroscaK

ADDRESS: 14126 East Rosecrans Blvd.

Santa Fe Springs, CA 90670

TELEPHONE:

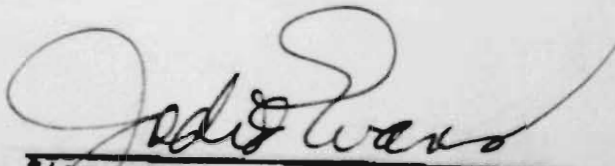
(310) 921-5058 Or (310) 912-7881

92 MAY 18 PM 3:38

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.

May 7, 1992

Date


Signature —
Jodie Evans, Campaign Manager
Brown for President Campaign

RESPONDENT'S NAME: Edmund Brown, Jr. and Brown for President Campaign

ADDRESS: 1212 Cloverfield Blvd.

Suite 120

Santa Monica, CA 90404

HOME PHONE:

BUSINESS PHONE:

(310) 449-1911

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LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007

O. PETER SHERWOOD
Corporation Counsel

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(212) 788-

92 MAY 15 PM 4:10

May 11, 1992

Dawn Odrowski
Office of the General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 3506

Dear Ms. Odrowski:

I am an Assistant Corporation Counsel in the office of O. Peter Sherwood, the Corporation Counsel of the City of New York and attorney for the respondents City of New York and Fernando Ferrer, the Bronx Borough President. Mr. Sherwood is by law attorney for the City of New York and its agencies. N.Y. City Charter sec. 394(a). In addition, the respondent Fernando Ferrer, the Bronx Borough President, requested this office to represent him. Enclosed is his Statement of Designation of Counsel.

I request on behalf of the City of New York and Mr. Ferrer an extension to Friday, May 29, 1992 of their time, pursuant to 2 U.S.C. 437g(a) & 11 C.F.R. 111.6(a), to respond to the complaint. The additional time is necessary to develop the facts relevant to the response.

Very truly yours,

David Drueding
Assistant Corporation Counsel
(212) 788-0892

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STATEMENT OF DESIGNATION OF COUNSEL

NR 3506

NAME OF COUNSEL: O. PETER SHERWOODADDRESS: Corporation Counsel of the City of New York
100 Church Street, Room 6F46
New York, New York 10007
TELEPHONE: (212) 788-0892Attn: DAVID DRUEDING
Assistant Corporation 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.

5/11/92
Date
SignatureRESPONDENT'S NAME: FERNANDO FERRER
President of the Borough of the Bronx
ADDRESS: Executive Division851 Grand ConcourseBronx, New York 10451

HOME PHONE:

(212) 365-9404

BUSINESS PHONE:

(212) 590-3500

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 18, 1992

Mr. O. Peter Sherwood, Esq.
Corporation Counsel of the City of New York
ATTN: David Drueding, Esq.
Assistant Corporation Counsel
100 Church Street, Room 6F46
New York, N.Y. 10007

RE: MUR 3506
City of New York and
Fernando Ferrer,
personally and as
President of the Borough
of the Bronx

Dear Mr. Drueding:

This is in response to your letter dated May 11, 1992, which we received on May 15, 1992, requesting an extension until May 29, 1992, to respond to the complaint filed against your clients, the City of New York and Fernando Ferrer, personally, and as President of the Borough of the Bronx. 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 29, 1992.

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

Sincerely,

Dawn M. Odrowski
Dawn M. Odrowski
Attorney

93040983679



LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007

O. PETER SHERWOOD
Corporation Counsel

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(212) 788-0892

May 28, 1992

Dawn Odrowski
Office of the General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 3506

Dear Ms. Odrowski:

I am an Assistant Corporation Counsel in the office of O. Peter Sherwood, the Corporation Counsel of the City of New York, and the attorney for the respondents City of New York and Fernando Ferrer, the Bronx Borough President. This letter, together with the affidavit of Borough President Ferrer, is submitted in response to the complaint, pursuant to 2 U.S.C. 437g(a) and 11 C.F.R. 111.6(a), and requests that the Federal Election Commission take no action on the complaint.

The Facts

On March 31, 1992, The Bronx Borough President Fernando Ferrer and Lehman College President Dr. Ricardo Fernandez co-sponsored and co-moderated a "Debate for Urban America" between the major candidates for the Democratic Party's presidential nomination, former California Governor Edmund G. Brown, Jr. and Arkansas Governor William J. Clinton.

Lehman College provided the facilities and services required to stage the debate, including use of Lehman College's Center for the Performing Arts and the printing of the tickets. The College has received no financial help to defray its costs staging the debate, except for \$3500 donated by Channel 47, WNJU-TV to cover the cost of a pre-debate reception and other expenses. The participating candidates got no honoraria or other payment, and bore the full cost of their participation in the debate.

Fernando Ferrer is the Bronx Borough President, the Borough's highest elected official. N.Y. City Charter ch. 4, secs. 81-82. He is solely responsible to the citizens of The Bronx whom he represents.

As co-sponsor, Borough President Ferrer assisted Lehman

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OFFICE OF GENERAL COUNSEL

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College in organizing the debate, but spent no City funds to underwrite the costs or to facilitate any candidate's participation. City funds were used only to the extent that the Borough President and his staff were involved, and therefore some part of the City funds appropriated for salaries and routine expenses of the Borough President's office might be allocated to the debate.

Borough President Ferrer contacted and solicited the participation in the debate of the major candidates of both political parties. He invited President Bush and Mr. Buchanan, the major candidates for the Republican Party's nomination, and former Governor Brown, Governor Clinton, Senator Harkin, Senator Kerry, and former Senator Tsongas, the major candidates for the Democratic Party's nomination. The President and Mr. Buchanan declined the invitation, and by the time of the debate Mr. Harkin, Mr. Kerry and Mr. Tsongas had withdrawn from the race.

The Borough President's office assisted in the distribution of tickets to the debate. Of about 2000 tickets, about 500 were allocated to Lehman College for use by its students and faculty. Another 300 (150 each) were given to the campaigns of the two participating candidates for distribution. About 100 were given to press and media representatives, and 200 to special guests (including New York City Mayor Dinkins and other public officials). The remaining tickets were distributed to the public on a first come, first served basis.

The Borough President's office acted as liaison with Lehman College to coordinate press and broadcast media coverage of the debate. WABC-TV (Channel 7) produced the debate for broadcast, and along with C-Span and WNYC Radio broadcast the debate live. WNJU-TV (Channel 47), WNYC-TV, and WNET-TV (Channel 13) broadcast the debate by tape delay (with WNJU-TV providing a Spanish translation).

On the evening of the debate, Mr. Ferrer and Dr. Fernandez served as co-moderators of the one-hour debate. The format provided for Dr. Fernandez or Mr. Ferrer to make a brief statement introducing a topic for discussion. Their statements set the agenda for the debate, describing the problems of housing, health care, crime and drugs, and economic development that confront The Bronx and urban American communities generally. Following each topic's introduction, the journalists on the panel, led by Bill Beutel of WABC-TV, posed specific questions to the candidates.

Neither before nor during the debate did Mr. Ferrer advocate the nomination or election, or solicit a campaign contribution for, any presidential candidate. Mr. Ferrer's co-sponsorship and participation in the "Debate for Urban America" did not involve advocacy of the election of a candidate for a federal office, or

any expenditure or contribution on behalf of a candidate for federal office.

Mr. Ferrer's co-sponsorship and participation in the debate served the First Amendment interest of his constituents. He fostered discussion of the urban issues that are vital to his constituents, and influenced the presidential candidates to give greater attention to the problems of "The Bronx and all the Bronxes in urban America."

Argument

The Federal Election Commission should take no action upon the complaint because there was no violation of either the Federal Election Campaign Act (FECA), 2 U.S.C. secs. 431 et seq., or the Federal Election Commission's regulations, 11 C.F.R. sec. 100 et seq.

First, the crux of the complaint is not Mr. Ferrer's co-sponsorship of the "Debate for Urban America," but the sponsors' refusal to accede to demands that candidates Lawrence A. Agran and Eugene J. McCarthy be allowed to participate. If Mr. Agran and Mr. McCarthy had been allowed to participate, the complainants undoubtedly would not be now be arguing to the Commission that Mr. Brown and Mr. Clinton received an illegal campaign contribution, since Mr. Agran and Mr. McCarthy would have received the same. Nor would complainants be arguing that the debate's sponsors violated federal election laws. It is their exclusion from the debate that prompts the complaint.

However, neither the FECA nor the Commission's regulations were violated by Mr. Agran's and Mr. McCarthy's exclusion. The Commission's regulations require that candidate debates "include at least two candidates" and be "nonpartisan in that they do not promote or advance one candidate over another." 11 C.F.R. 110.13(b). The regulations otherwise leave matters of debate structure to the discretion of the staging organization, including the discretion not to invite candidates such as Mr. Agran and Mr. McCarthy who in the course of the primaries and caucuses preceding the New York primary had failed to demonstrate a "significant, measurable quantum of community support." American Party v. White, 415 U.S. 765, 782 (1974).

Lacking legal grounds to challenge Mr. Agran's and Mr. McCarthy's exclusion, complainants instead lodge an attack on the debate's sponsors and the two participating candidates. That attack has no relation to the substance of the complainants' grievance, Mr. Agran's and Mr. McCarthy's exclusion from the debate. Its resolution would not lead to minor candidates being included in nonpartisan candidate debates. Because a favorable decision on the complaint would not redress the complainants' real grievance, the Commission should not act upon the complaint.

See Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 38 (1976).

Second, the FECA does not bar Lehman College from staging a nonpartisan candidate debate, or the Borough President from helping. Lehman College is part of the City University of New York, which is organized and operated under the laws of the State of New York exclusively for educational purposes. N.Y. Educ. Law secs. 6201 et seq. Undoubtedly, the College meets the criteria for an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code. 26 U.S.C. sec. 501(c)(3) (exempt organizations include corporations organized and operated exclusively for educational purposes). It is irrelevant that the College is exempt from taxation as an instrumentality of the State of New York, and therefore does not rely on section 501(c)(3) for its exemption from corporate taxation. Under the Commission's regulations, non-profit organizations such as Lehman College may stage nonpartisan candidate debates. 11 C.F.R. 110.13(a). Thus, Lehman College acted entirely lawfully in using its facilities and resources to stage the March 31 debate.

Moreover, a corporation may donate funds to such nonprofit organizations to defray costs incurred in staging nonpartisan candidate debates. 11 C.F.R. sec. 114.4(e)(1)&(3). Accordingly, the Borough President's use of New York City resources to assist Lehman College to stage the debate is wholly consistent with the Commission's regulations.

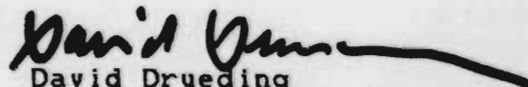
Third, the FECA cannot be construed as preventing the Borough President from using the resources of his office to advocate the importance of issues vital to his constituents, and to influence candidates to speak to those issues. An elected official such as the Borough President, no less than a corporation, has a First Amendment right to foster discussion of public issues. Because of First Amendment considerations, the ban in section 441b(a) of the FECA on corporate contributions and expenditures has been limited to "express advocacy," involving the advocacy of the election or defeat of a candidate. Buckley v. Valeo, 424 U.S. 1, 42-43 (1976); see FEC v. Massachusetts Citizens for Life, 479 U.S. 238, 249 (1986); Faucher v. FEC, 928 F.2d 468 (1st Cir. 1991). Similarly, section 441b(a) of the FECA cannot be construed as limiting an elected official's nonpartisan advocacy.

Fourth, the Borough President's use of municipal resources to help organize a nonpartisan candidate debate cannot be deemed a "corporate" contribution or expenditure to which the FECA is applicable. The rationale underlying the FECA is the concern that "organizations that amass great wealth in the economic market place not gain unfair advantage in the political market place." Massachusetts Citizens for Life, 479 U.S. at 263. That rationale could not possibly justify restricting an elected official's use

of public funds to advocate the interests of his constituents. Elected officials are responsible solely to their constituents. The public organizations of which they are part, although corporate in form, are financed with public money, which by law may only be spent for public purposes. Elected officials acting in their official capacities and in the interests of their constituents do not create a threat to the political market place. The Borough President's activities simply do not fall within the realm that Congress intended to regulate. See id. at 263-64; cf. Bradley v. Saxbe, 388 F. Supp. 53 (D.C.D.C. 1974)(exempting city employees from registration requirements applicable to corporate lobbyists).

In sum, the FECA and the Commission's regulation do not and could not be applied to restrict the right of the Bronx Borough President in his official capacity to use public funds to advocate and promote discussion of the urban issues important to his constituents. For these reasons, the Commission should take no action on the complaint.

Respectfully submitted,


David Drueding
Assistant Corporation Counsel

BEFORE THE FEDERAL ELECTION COMMISSION
UNITED STATES OF AMERICA

-----X
LAWRENCE A. AGRAN, EUGENE J.
MCCARTHY, LENORA B. FULANI, AND
RAPHAEL MENDEZ,

Complainants,

Case No. MUR 3506

v.

FERNANDO FERRER, Bronx Borough
President, CITY OF NEW YORK, RICARDO
FERNANDEZ, President of Lehman College,
LEHMAN COLLEGE, WILLIAM J. CLINTON,
CLINTON FOR PRESIDENT COMMITTEE,
EDMUND G. BROWN, JR., and BROWN FOR
PRESIDENT,

Respondents.

-----X
AFFIDAVIT OF RESPONDENT FERNANDO FERRER

STATE OF NEW YORK)
 : SS.:
COUNTY OF BRONX)

FERNANDO FERRER, being duly sworn, deposes and says:

1. I am the Bronx Borough President, the Borough's
highest elected official, and am responsible to the citizens of The
Bronx whom I represent.

2. I submit this affidavit in support of the request that
the Federal Election Commission take no action on the basis of the
complaint.

3. On March 31, 1992, Dr. Ricardo Fernandez, the
President of Lehman College, and I co-sponsored and co-moderated a

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"Debate for Urban America" between the major candidates for the Democratic Party's presidential nomination, former California Governor Edmund G. Brown, Jr. and Arkansas Governor William J. Clinton.

4. I co-sponsored the debate to foster discussion of the urban issues that are vital to my constituents, and to influence the presidential candidates to give greater attention to the problems of "The Bronx and all the Bronxes in urban America."

5. Lehman College provided the facilities and services to stage the debate, including use of Lehman College's Center for the Performing Arts and the printing of the tickets. To my knowledge, the College has received no financial help to stage the debate, except for \$3500 donated by Channel 47, WNJU-TV to cover the cost of a pre-debate reception and other expenses. The participating candidates got no honoraria or other payment, and bore the full cost of their participation, including transportation to Lehman College.

6. As co-sponsor, I assisted Lehman College in organizing the debate, but spent no City funds to underwrite the costs or to facilitate any candidate's participation. City funds were used only to the extent that I and my staff were involved, and therefore some part of the City funds appropriated for salaries and routine office expenses might be allocated to the debate.

7. I contacted and solicited the participation in the debate of the major candidates of both political parties. I invited President Bush and Mr. Buchanan, the major candidates for the Republican Party's nomination, and former Governor Brown, Governor Clinton, Senator Harkin, Senator Kerry, and former Senator Tsongas, the

major candidates for the Democratic Party's nomination. The President and Mr. Buchanan declined my invitation, and by the time of the debate Mr. Harkin, Mr. Kerry and Mr. Tsongas had withdrawn from the race.

8. My office assisted in the distribution of tickets to the debate. Of about 2000 tickets, 500 were allocated to Lehman College for use by its students and faculty. Another 300 (150 each) were given to the campaigns of the two participating candidates for distribution. About 100 were given to press and media representatives, and 200 to special guests (including New York City Mayor Dinkins and other public officials). The remaining 900 tickets were distributed through my office and Lehman College to the public on a first come, first served basis.

9. My office acted as liaison with Lehman College to coordinate media coverage. WABC-TV (Channel 7) produced the debate for broadcast. WABC-TV (Channel 7), C-Span, and WNYC Radio all broadcast the debate live, and WNJU-TV (Channel 47)(with a simultaneous translation to Spanish), WNYC-TV, and WNET-TV (Channel 13) broadcast the debate by tape delay.

10. On the evening of the debate, Dr. Fernandez and I served as co-moderators of the one-hour debate. Under the debate's format, either Dr. Fernandez or I made a brief statement introducing a topic for discussion. Our statements set the agenda for the debate, describing the problems of housing, health care, crime and drugs, and economic development that confront The Bronx and urban American communities generally. Following each topic's introduction,

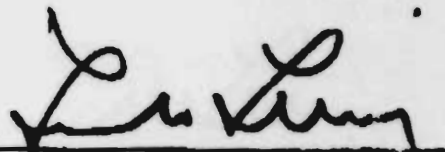
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a panel of journalists, led by Bill Seutel of WABC-TV, posed specific questions to the candidates. (A videotape of the debate is Exhibit A to this Affidavit.)

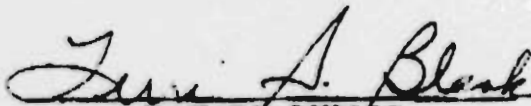
11. Neither before nor during the debate did Dr. Fernandez or I advocate the nomination or election, or solicit a campaign contribution for, any presidential candidate.

12. My co-sponsorship and participation in the "Debate for Urban America" did not involve advocacy of the election of a candidate for a federal office, or any expenditure or contribution on behalf of a candidate for federal office.

13. My co-sponsorship and participation in the debate served the First Amendment interest of my constituents in hearing discussion of the public issues that are important to their future, and in communicating to the candidates the importance I and my constituents attach to presidential candidates addressing the problems of Urban America.


FERNANDO FERRER

Sworn to before me this
28th day of May, 1992.


NOTARY PUBLIC

TERRI S. BLANK
Notary Public, State of New York
No. 034207198
Qualified in Bronx County
Commission Expires March 30, 1994

TERRI S. BLANK
Notary Public, State of New York

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FEDERAL ELECTION COMMISSION
UNITED STATES OF AMERICA

-----X

LAWRENCE A. AGRAN, EUGENE J.	:	
MCCARTHY, LENORA B. FULANI and	:	MUR No. 3506
RAFAEL MENDEZ,	:	
Complainants,	:	
- against -	:	RESPONSE OF
	:	LEHMAN COLLEGE and
FERNANDO FERRER, Bronx Borough	:	<u>RICARDO FERNANDEZ</u>
President, CITY OF NEW YORK,	:	
RICARDO FERNANDEZ, President of	:	
Lehman College, LEHMAN COLLEGE,	:	
WILLIAM J. CLINTON, CLINTON FOR	:	
PRESIDENT COMMITTEE, EDMUND G.	:	
BROWN, JR., and BROWN FOR	:	
PRESIDENT,	:	
Respondents.	:	
	:	
-----X		

Preliminary Statement

Respondents Lehman College and its President, Dr. Ricardo Fernandez, respectfully submit this response, including the accompanying affidavit of Dr. Fernandez sworn to on May 29, 1992, to the complaint filed by Lawrence A. Agran, Eugene J. McCarthy, Lenora B. Fulani and Rafael Mendez. As set forth in detail below, the Commission should not take any action against the College or Dr. Fernandez (hereinafter collectively referred to as the "Respondents"), on the basis of this complaint, for the following reasons:

- (1) the debate which is the subject of this complaint was specifically permitted by FEC regulations 11

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- CFR§§114.4(e)(1) and 110.13, since the debate was staged by a nonprofit, tax-exempt educational organization, included two candidates, and was conducted in a nonpartisan manner; and
- (2) there was no "express advocacy" subject to the prohibition of 2 U.S.C. § 441b(a).

Statement Of Facts

On March 31, 1992, Herbert L. Lehman College of The City University of New York (referred to herein as "Lehman College" or the "College") staged the "Debate for Urban America" which is the subject of the instant complaint. Lehman College is a senior college unit of The City University of New York, and is located in the Borough of the Bronx in the City of New York. The City University of New York ("CUNY") is a public university which was created under and exists by virtue of Article 125 of the New York Education Law, and consists of ten senior colleges (including Lehman College), seven community colleges, a graduate school, a law school, a medical school, and an affiliated medical school. CUNY has an enrollment of approximately 200,000 students. Its mission, as declared by the New York State Legislature, includes a commitment not only to academic excellence, but also to the "upward mobility of the disadvantaged in the

City of New York" and to meeting "the special needs of an urban constituency". Educ. Law § 6201.

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In January, 1992, Dr. Ricardo Fernandez, the President of Lehman College, was contacted by the office of Fernando Ferrer, the Bronx Borough President, and asked whether Lehman College would be interested in staging a debate between the major candidates for the Democratic Party's presidential nominations and a debate between the major candidates for the Republican Party's presidential nomination. The debates would be co-sponsored by the College and Mr. Ferrer, and would focus on the particular interests and concerns of those who reside in America's urban areas such as the Bronx. Dr. Fernandez was informed by Mr. Ferrer's office that invitations to participate in such debates had been extended to the then-major candidates for their party's nominations, Messrs. Brown, Clinton, Harkin, Kerry and Tsongas of the Democratic Party, and President Bush and Mr. Buchanan of the Republican Party.

Several weeks later, the College agreed to stage the debates and to co-sponsor them with Mr. Ferrer. Ultimately, there was only one such debate, that between the Democratic contenders, since President Bush and Mr. Buchanan both declined Mr. Ferrer's invitation. In addition, Messrs. Harkin, Kerry and Tsongas declined after they withdrew from the race.

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Over the next several weeks, Lehman College students, faculty and staff organized and prepared for the Brown-Clinton debate. Among other tasks, the College (in consultation with the Secret Service) hired security personnel; the College, Mr. Ferrer, and WABC-TV News arranged for the debate to be televised; a group of Lehman College political science students, assisted by personnel from WABC-TV News, formulated the questions to be asked at the debate; the College printed all of the announcements and tickets for the debate; and the College distributed approximately 500-600 of the tickets to students, faculty, administrators and friends of the College, with the remaining 1400-1500 tickets to be distributed to members of the press and media, to special guests (including Mayor Dinkins and other public officials), and to the public, by Mr. Ferrer's office.

The debate was held at the College's Performing Arts Center. Under the debate's format, each of five topics was introduced by either Dr. Fernandez or Mr. Ferrer. The topics were education, crime and drugs, housing, the economy, and health care, as these matters affect the Bronx and urban American communities in general. Following each topic's introduction, specific questions were posed to the candidates by members of a panel of newspeople. The debate was televised live and by tape delay, and was also covered by the press. As evidenced by

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a videotape of the debate (which we understand is being submitted to the Commission by counsel for Mr. Ferrer), at no time during the debate was there any endorsement of or expressed preference for or against either candidate. No funds were provided by the College or Dr. Fernandez to the candidates or their committees, nor was there any solicitation of contributions or expenditures to any candidate or candidate's committee. Furthermore, no honoraria were paid, nor were the candidates or their committees reimbursed for their expenses.

The debate served a number of laudatory purposes. Most obviously, it fostered increased public awareness and discussion of the views of these candidates, and served CUNY's statutory mission by focusing attention on the particular needs of urban America. Perhaps less obvious, but also important, the debate served as a lesson in democracy in action for the students of Lehman College.

Point I

This Debate Falls Squarely Within
The Exemption For Nonpartisan
Debates Under 11 CFR§§ 114.4(e)(1)
and 110.13

2 U.S.C. § 441b(a) provides that "[i]t is unlawful. . .for any corporation whatever. . .to make a contribution or expenditure. . .in connection with any primary election. . . ." However, funds received and expended by "Sec. 501(c)(3)" nonprofit organizations to defray costs incurred in staging nonpartisan debates, are exempted from the prohibition of Sec. 441b(a) under FEC Regulations 11 CFR§§ 114.4(e)(1) and 110.13. The debate in issue falls squarely within this exemption.

11 CFR§ 114.4(e)(1) states:

A nonprofit organization qualified under 11 CFR 110.13(a)(1) may use its own funds and may accept funds donated by corporations or labor organizations under 11 CFR 114.4(e)(3) to defray costs incurred in staging nonpartisan candidate debates held in accordance with 11 CFR § 110.13.^[1]

11 CFR§ 110.13(a)(1) states:

A nonprofit organization which is exempt from federal taxation under 26 U.S.C. 501(c)(3), and a nonprofit organization which is exempt from federal taxation

¹ 11 CFR §114.4(e)(3) states: "A corporation or labor organization may donate funds to nonprofit organizations qualified under 11 CFR 110.13(a)(1) to stage nonpartisan debates held in accordance with 11 CFR 110.13 and 114.4(e)."

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under 26 U.S.C. 501(c)(4) and which does not endorse, support or oppose political candidates or political parties may stage nonpartisan candidate debates in accordance with 11 CFR 110.13(b) and 114.4(e).

26 U.S.C. §501(c)(3) describes the following class of tax exempt organizations:

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Since 1942, CUNY and its college units have been recognized by the Internal Revenue Service as an instrumentality of the State of New York and hence not subject to federal income taxation and not required to file returns of income. See letters from Internal Revenue Service dated Nov. 6, 1942 and Oct. 23, 1968, attached hereto as Exhibit A. Accordingly, it appears that there has never been a reason for CUNY to assert Sec.

501(c)(3) status for tax purposes. Nonetheless, CUNY does satisfy the criteria for tax-exempt status under Sec. 501(c)(3). CUNY is a publicly funded, nonstock "body corporate" (see Educ. Law § 6203), which exists to provide post-secondary education in New York City (see Educ. Law § 6201). CUNY undertakes to influence legislation only when incidental to its educational mission, and such efforts do not constitute a substantial part of CUNY's activities. Nor, of course, does CUNY engage in electioneering.

Furthermore, since CUNY was organized before October 9, 1969,² its status as a Sec. 501(c)(3) organization would not be dependent on its having obtained a determination to that effect from the Internal Revenue Service. Cf. 26 U.S.C. § 508 (which imposes a notification requirement on nonprofit organizations organized after October 9, 1969) and Treas. Reg. § 1.508-1. See also S. Weithorn, 1A Tax Techniques for Foundations and other Exempt Organizations, §45.03[2][a]-[b] at 45-34 to 45-36.³ Thus, the debate was staged by a nonprofit

² The State Legislature established a municipal-college system in 1926 with the creation of a 21-member New York City Board of Higher Education. In 1961 that system was designated The City University of New York. See Laws of New York of 1961, Ch. 388, § 7.

³ It might also be noted that the particular building on the Lehman campus in which the debate was held is owned by the

Footnote continued on next page.

organization which is exempt from federal taxation under 26 U.S.C. §501(c)(3).⁴

It is also clear that the debate was held in accordance with the requirements of 11 CFR § 110.13(b). That section states:

The structure of debates staged in accordance with 11 CFR 110.13 and 114.4(e) is left to the discretion of the staging organization, provided that (1) such debates include at least two candidates, and (2) such debates are nonpartisan in that they do not promote or advance one candidate over another.

It is, of course, conceded by the complainants that the debate in issue included two candidates. Furthermore, as evidenced by the videotape--and as not disputed by the complainants--the

Footnote continued from previous page.

New York State Dormitory Authority, a public benefit corporation created under Public Authorities Law §1677, and that any rental fees which are collected for the use of this building--the fee was waived in the case at hand-- go to Lehman College Center for the Performing Arts, Inc., an IRS-recognized Sec. 501(c)(3) organization. (It is Lehman College Center for the Performing Arts, Inc.'s policy to waive the rental fee in the case of Lehman College and other CUNY events.)

⁴ Even if the Commission were to conclude that for technical reasons Sec. 501(c)(3) cannot apply to a public university system such as CUNY, it would nonetheless be arbitrary and capricious to deny CUNY the benefit of the nonpartisan debate exemption while permitting private nonprofit colleges to sponsor nonpartisan debates.

debate did not promote or advance either candidate over the other.

Nonetheless, the complainants assert that "[t]his debate was not organized in a nonpartisan manner". (Complt. ¶ 24). Apparently, the complainants are basing this assertion on the fact that Dr. Fulani, Mr. Agran and Mr. McCarthy were not invited to participate in the debate. However, in explaining the debate regulations at hand, the Commission itself has stated:

For debates at the primary, caucus or convention level, a staging organization may restrict participation to candidates seeking the nomination of one party. Moreover, if a staging organization restricts participation to candidates seeking the nomination of one party, there would be no requirement to stage a debate for candidates seeking the nomination of any other party. However, any debate held for primary, caucus or convention candidates may not promote one candidate over another.

44 F.R. 76735, Dec. 27, 1979. See also Fulani v. League of Women Voters Education Fund, 882 F.2d 621 (2nd Cir. 1989), which held that the exclusion of Dr. Fulani, in that case as now a minor party candidate for President of the United States, from a debate among Democratic primary candidates, did not render the debate a partisan one.

Nor did the failure to invite Mr. Agran or Mr. McCarthy, who are candidates for the nomination of the

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Democratic Party, taint the debate. It is not a requirement of nonpartisanship that every person seeking a party's nomination be invited to participate in a debate among that party's hopefuls. Indeed, the sheer number of candidates would often make such a requirement infeasible and inimical to the goal of meaningful debate. Thus, the Commission has stated that it is permissible to limit participation in a nonpartisan candidate debate to the "significant" candidates. 44 F.R. 76734, Dec. 27, 1979; see also Fulani v. League of Women Voters Education Fund, 882 F.2d at 629. That is exactly what was done here.

As the Commission has stated:

A debate is nonpartisan if it is for the purpose of educating and informing the voters, provides fair and impartial treatment of candidates, and does not promote or advance one candidate over another.

44 F.R. 76735, Dec. 27, 1979. As Respondents have demonstrated, this test has been completely satisfied here.

Point II

There Was No Violation Of 2 U.S.C.
§441b(a) Because There Was No
Express Advocacy

In Federal Election Commission v. Massachusetts Citizens For Life, Inc., 479 U.S. 238, 249 (1986), the United States Supreme Court unanimously held that an expenditure must

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constitute "express advocacy" in order to be subject to the prohibition of 2 U.S.C. 441b(a). This holding was based on the Court's finding that application of Sec. 441b in the absence of "express advocacy" would violate the First Amendment.

Applying the only logical reading of Massachusetts Citizens For Life, the court in Federal Election Commission v. National Organization For Women, 713 F.Supp. 428, 433 (D.D.C. 1989), determined that "the standard 'in connection with an election' is not distinct from 'express advocacy'", and thus that "only communications which contain explicit electoral messages can be prohibited by § 441b".⁵

"Express advocacy" exists only where there is a clear exhortation to vote for (or against) a particular candidate. Federal Election Commission v. Massachusetts Citizens For Life, Inc., 479 U.S. at 249; Faucher v. Federal Election Commission, 928 F.2d 468, 470 (1st Cir. 1991).

In the case at hand, there has certainly been no express advocacy, as evidenced by the videotape of the debate. Thus, not only does the debate fall within the nonpartisan debate exemption to Sec. 441b(a) as established in Point I

⁵ Given that Sec. 441b uses the terms "contribution or expenditure" interchangeably for purposes of that section (see Sec. 441b(b)(2)), the "express advocacy" requirement would apply to contributions as well as to expenditures.

above, but, in addition, the challenged activity does not even fall within the proscription of Sec. 441b(a).

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Conclusion

For the reasons set forth above, the Commission should not take any action against Lehman College or its President, Dr. Ricardo Fernandez.

Dated: New York, New York
May 29, 1992

PARKER CHAPIN FLATTAU & KLIMPL
Attorney for Respondents
Lehman College and Ricardo
Fernandez, President of
Lehman College
1211 Avenue of the Americas
New York, NY 10036
(212) 704-6000

Of Counsel:
Charles P. Greenman
Karen F. Lederer

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TREASURY DEPARTMENT

WASHINGTON

OFFICE OF
COMMISSIONER OF INTERNAL REVENUE

AGENTS OF THE
COMMISSIONER OF INTERNAL REVENUE
AND DEPT. OF

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Board of Higher Education,
(operating as The College of the
City of New York),
695 Park Avenue,
New York, New York.

NOV 6 1942

Sirs:

Reference is made to the information furnished by you for use
in determining your status for Federal income taxation.

The information furnished discloses that you were incorporated
on April 16, 1926, in accordance with the provisions of the Education
Law of the State of New York, effective April 16, 1926, and that you
administer, under the powers and duties set forth in the Education
Law, the City College, Hunter College, Brooklyn College, and Queens
College, municipal colleges operated by the City of New York.

It is the opinion of this office, based upon the evidence pre-
sented, that your activities are a part of the educational system
of the State of New York. As an instrumentality of that State you
are not subject to Federal income taxation and are not required to
file returns of income.

A copy of this letter is being transmitted to the collector of
internal revenue for your district.

By direction of the Commissioner.

Respectfully,

W. H. C. [Signature]
Deputy Commissioner.



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Internal Revenue Service

Washington, DC 20224

Date: In reply refer to

OCT 23 1968

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Board of Higher Education
535 East Eightieth Street
New York, New York 10021

Attention: Arthur H. Kahn
General Counsel



Gentlemen:

This is in reply to your letter of June 13, 1968, wherein you request to list your organizations, Richmond College, York College, Herbert H. Lehman College, and Bernard M. Baruch College in the Cumulative List of Organizations, contributions to which are deductible for Federal income tax purposes.

You further request that the current listing of one of your educational units, College of Police Science, be changed to read John Jay College of Criminal Justice.

You have submitted copies of resolutions adopted by your organization approving the creation and establishment of these colleges and that the name of the College of Police Science be changed to John Jay College of Criminal Justice.

In a letter to you dated November 6, 1942, we held that as an instrumentality of the State of New York, you were not subject to Federal income tax. On March 15, 1961, we advised you that contributions to you are deductible by the donors in accordance with section 170(c) of the Code of 1954, providing such contributions are made for exclusively public purposes.

It is our conclusion that Richmond College, York College, Herbert H. Lehman College, and Bernard M. Baruch College, are activities of your organization, a wholly owned instrumentality of the State of New York operating under the name and title of City University of New York. Accordingly, contributions made to any of these institutions for exclusively public purposes are deductible by the donors.

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In a letter to you dated August 13, 1965, we held that contributions to the College of Police Science which were made for exclusively public purposes would be deductible by the donors. By your resolution adopted on December 19, 1966, the name of the College of Police Science was changed to John Jay College of Criminal Justice.

The inclusion in the Cumulative List of the above-named new educational units and the changing of the current listing of the College of Police Science to read John Jay College of Criminal Justice is within the jurisdiction of a separate branch within the National Office and a reply in this matter will be made the subject of a separate communication.

Very truly yours,

Lester W. Htter

Chief, Individual Income Tax Branch

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FEDERAL ELECTION COMMISSION
UNITED STATES OF AMERICA

-----X

LAWRENCE A. AGRAN, EUGENE J.
MCCARTHY, LENORA B. FULANI and
RAFAEL MENDEZ,

:

MUR No. 3506

:

Complainants,

:

- against -

:

AFFIDAVIT OF
RICARDO FERNANDEZ

FERNANDO FERRER, Bronx Borough
President, CITY OF NEW YORK,
RICARDO FERNANDEZ, President of
Lehman College, LEHMAN COLLEGE,
WILLIAM J. CLINTON, CLINTON FOR
PRESIDENT COMMITTEE, EDMUND G.
BROWN, JR., and BROWN FOR
PRESIDENT,

:

:

:

:

:

Respondents.

:

-----X

STATE OF NEW YORK

)

: SS.:

COUNTY OF BRONX

)

RICARDO FERNANDEZ, being duly sworn, deposes and says:

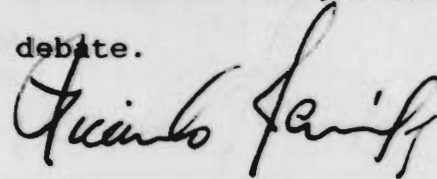
1. I am the President of Lehman College of The
City University of New York.

2. I submit this affidavit in support of the
request that the Federal Election Commission take no action
against Lehman College or me on the basis of the instant
complaint.

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3. Lehman College staged, and co-sponsored with Fernando Ferrer, Bronx Borough President, the "Debate for Urban America" which is the subject of this complaint.

4. The debate was held at Lehman's Performing Arts Center on March 31, 1992. The College (in consultation with the Secret Service) hired security personnel; the College printed all of the announcements and tickets for the debate; and the College distributed approximately 500-600 of the tickets to students, faculty, administrators and friends of the College, with the remaining 1400-1500 tickets to be distributed to members of the press and media, to special guests (including Mayor Dinkins and other public officials), and to the public, by Mr. Ferrer's office. In addition, working together with Mr. Ferrer and WABC-TV, the College arranged for the debate to be televised. Moreover, a group of Lehman College political science students, assisted by personnel from WABC-TV News, formulated the questions to be asked at the debate.



Ricardo Fernandez

Sworn to before me this
29 day of May, 1992.


Notary Public

ISIDORE ZWILG
NOTARY PUBLIC, State of New York
No. 4505750
Qualified in Rockland County
Certificate Filed in New York City
Commission Expires July 31, 1993

Bill Clinton
FOR PRESIDENT COMMITTEE

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

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June 2, 1992

Ms. Dawn Odrowski
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

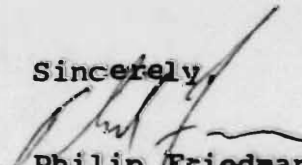
Re: MUR 3506

Dear Ms. Odrowski:

Enclosed please find the Response of the Clinton for President Committee and Robert A. Farmer, as treasurer, and the Honorable William J. Clinton in the above referenced action.

Should you have any questions, please contact me at (202) 296-8600.

Sincerely,


Philip Friedman
Deputy General Counsel

Enclosure

cc: Tony Harrington
Christine Varney

UNITED STATES OF AMERICA
BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF FERNANDO FERRER, Bronx
Borough President, CITY OF NEW YORK,
RICARDO FERNANDEZ, President of Lehman
College, LEHMAN COLLEGE, WILLIAM J.
CLINTON, CLINTON FOR PRESIDENT COMMITTEE,
EDMUND G. BROWN, JR., and BROWN FOR
PRESIDENT

MUR 3506

RESPONSE OF
WILLIAM J. CLINTON AND CLINTON FOR PRESIDENT COMMITTEE
AND ROBERT A. FARMER, AS TREASURER

Anthony S. Harrington
General Counsel

Philip S. Friedman
Deputy General Counsel

Clinton for President Committee
(202) 296-8600

June 2, 1992

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF FERNANDO FERRER, Bronx
Borough President, CITY OF NEW YORK,
RICARDO FERNANDEZ, President of Lehman
College, LEHMAN COLLEGE, WILLIAM J.
CLINTON, CLINTON FOR PRESIDENT COMMITTEE,
EDMUND G. BROWN, JR., and BROWN FOR
PRESIDENT

MUR 3506

RESPONSE OF
WILLIAM J. CLINTON AND CLINTON FOR PRESIDENT COMMITTEE
AND ROBERT A. FARMER, AS TREASURER

INTRODUCTION

On April 17, 1992 Lawrence A. Agran, Eugene J. McCarthy, Lenora Fulani and Raphael Mendez (collectively "Complainants") filed a complaint with the Federal Election Commission ("FEC" or "Commission") alleging that William J. Clinton, the Clinton for President Committee and other respondents had violated 2 U.S.C. § 441b(a) by participating in a March 31, 1992 candidate debate at Lehman College in New York City, New York.

The complaint alleges that the Bronx Borough President, Respondent Fernando Ferrer, acted as a co-sponsor of the debate, and that Respondent City of New York, a municipal corporation, improperly provided resources through Ferrer's office to "promote, publicize, organize, administer and otherwise support and fund the [debate]." Complaint at 3, ¶ 10. The Complaint

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further alleges that Ferrer "closely controlled the staging of the event" and controlled the admission to the audience of the debate. Complaint at 4, ¶ 15. The Complaint appears to be primarily motivated by the fact that Complainants Agran and McCarthy were excluded from participation in the candidate debate and that Complainant Fulani was denied admission to the debate (Complaint at 4 ¶¶ 15,16).

The allegations have no merit. As a preliminary matter, the Complaint has failed to allege a single fact in which any corporation, person or other entity has made a contribution or expenditure expressly advocating the election or defeat of a candidate for federal office. In short, there has been no allegation made upon which the Commission could find a violation of 2 U.S.C. § 441b. Moreover, Lehman College, a nonprofit tax-exempt educational organization, and not New York City, a municipal corporation, staged the nonpartisan candidate debate. Whatever costs New York City or other entities may have incurred in promoting the Lehman College debate were funds provided to Lehman College to help defray its costs of staging the nonpartisan candidate debate. Consequently, the FEC should take no action against William J. Clinton, the Clinton for President Committee, or Robert A. Farmer as treasurer in connection with this action.

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I. THE STAGING OF A NONPARTISAN CANDIDATE DEBATE CANNOT RESULT IN CONTRIBUTIONS OR EXPENDITURES BEING MADE IN CONNECTION WITH A FEDERAL ELECTION.

The Complainants assert that Respondents William J. Clinton and Edmund G. Brown, Jr., along with their respective campaign committees, received impermissible corporate contributions by participating in a nonpartisan candidate debate allegedly sponsored by Ferrer and the City of New York. This allegation defies a plain and common sense reading of the statute and mocks the federal courts' repeated admonishments to the FEC of the well defined limitations of the Act. FEC v. Central Long Island Tax Reform Committee, 616 F.2d 45, 55 (2d Cir. 1980) (en banc); FEC v. Hall-Tyner Election Campaign Committee, et al., 678 F.2d 416, 424 (2d Cir.) cert denied 459 U.S. 1145 (1983).

A. THE LEHMAN COLLEGE DEBATE WAS A NONPARTISAN CANDIDATE DEBATE

The effort by the Complainants to bootstrap their grievance over being excluded from the Lehman College debate into a violation of the FECA cannot withstand scrutiny. As FEC regulations make clear, the staging organization of a nonpartisan candidate debate has broad discretion in determining debate participants.

Under 11 CFR 110.13(b), the structure of debates "is left to the discretion of the staging organization, provided that (1) such debates include at least two candidates, and (2) such debates are nonpartisan in that they do not promote or advance one candidate over another." See 11 CFR 110.13 (b).

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The regulations purposefully do not set out more specific candidate selection criteria, but leave these matters to the discretion of the debate organizer. Although the Explanation and Justification for the debate regulations suggests that debates "must provide fair and impartial treatment of candidates" (44 Fed. Reg. 76,735 (1979)), it also recognizes that "[a] nonpartisan candidate debate ...provides a forum for significant candidates to communicate their views to the public. 44 Fed. Reg. 76,734 (1979) (emphasis added).

Indeed, the Commission has ruled in two earlier cases that candidates that are not "significant" may properly be excluded from a debate by a debate staging organization. See Complaint of the LaRouche Campaign against the League of Women Voters Education Fund, FEC MUR No. 1659; Complaint of Barry Commoner and the Citizens Party against the League of Women Voters Education Fund, FEC MUR No. 1287. With reason, neither Larry Agran nor Eugene McCarthy is regarded by the national press as a significant candidate meriting media attention.¹ At the time each attempted to be included in the Lehman College Debate, neither had qualified for federal matching funds, neither was actively campaigning in a number of states, and neither had figured significantly in national voter polls. Thus, there was nothing improper in Lehman College excluding Larry Agran or

¹Complainant Fulani does not appear to contest her exclusion from participation in the Lehman College debate.

Eugene McCarthy from participation in the debate. See FEC MUR 1659.

In the case of the March 31 Lehman College debate, the staging organization complied with the two enumerated debate format criteria. First, two significant candidates, Bill Clinton and Jerry Brown, participated in the debate.² Second, the format was designed to discuss urban issues and to educate voters in New York as to the candidates' positions on these issues before they voted in the New York primary. Nothing in the debate format was designed to advance or promote either of the candidates over the other and the candidates who were invited to and participated in the debate were provided fair and impartial treatment. By even the narrowest reading of the term, the debate was a nonpartisan affair that fully met the regulatory requirements of 11 CFR 110.13(b). See Explanation and Justification, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 864.³

²Lehman College also invited the other significant Democratic candidates, Bob Kerry, Tom Harkin and Paul Tsongas, all of whom were no longer actively campaigning for the nomination at the time the debate took place. The two significant Republican candidates, George Bush and Pat Buchanan were also invited to participate.

³Additional support for the assertion that the debate was a nonpartisan affair is demonstrated by the fact that the debate was broadcast live by FCC licensees, WABC Channel 7 and WNJU Channel 47. According to the FEC, debates staged by broadcasters provide "sufficient safeguards as to nonpartisanship of debates" given the necessity of broadcasters to abide by equal opportunity provisions set forth in the Communications Act. See Explanation and Justification, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 864.

B. A NONPARTISAN CANDIDATE DEBATE LACKS ANY EXPRESS
ADVOCACY UPON WHICH SECTION 441B VIOLATION MUST BE
PREDICATED.

Section 441b(a) of the Act provides that "[i]t is unlawful for any . . . corporation . . . to make a contribution or expenditure in connection with any election to any political office . . ." 2 U.S.C. § 441b(a) (emphasis added). Section 441b(b)(2) additionally states that "[f]or purposes of this section . . . the term 'contribution or expenditure shall . . . include anything of value . . . to any candidate . . . in connection with any election." 2 U.S.C. § 441b(b)(2) (emphasis added).

In FEC v. Massachusetts Citizens for Life, 479 U.S. 238, 249 (1986), the Supreme Court unanimously and unequivocally held that the Act's prohibition against corporate expenditures "in connection with an election" requires that the "expenditure must constitute 'express advocacy' in order to be subject to the prohibition of § 441b." MCFL, 479 U.S. at 249. Applying the only logical reading of MCFL, the court in FEC v. National Organization for Women ("NOW"), recently determined "that the standard 'in connection with an election' is not distinct from 'express advocacy,'" and further found that "only communications which contain explicit electoral messages can be prohibited by §

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441b."⁴ FEC v. NOW, 713 F.Supp. 428, 433 (D.D.C. 1991) appeal withdrawn.⁵

The Complainants have not made a single allegation that any person or entity allegedly involved in staging the nonpartisan candidate debate made any exhortation to vote for or against a specific candidate. Complainants have only alleged that Ferrer worked to promote and organize the debate. There is no allegation that he, New York City, Lehman College or anybody else expressly advocated or promoted the candidacy of Clinton, Brown, or any other candidate for the nomination. In fact, the March 9, 1992 Press Release issued by Ferrer's office mentions no candidate by name, and specifically states that "[c]andidates from both parties were invited [to the debate]." See Exhibit A to the Complaint. This release quotes Ferrer as stating that the debate will provide an "opportunity to talk about urban issues at a leading City college in the Bronx -- not as metaphor for urban failure -- but as a proving ground for urban opportunities." Id. Thus, the debate is portrayed as an opportunity to question the candidates on difficult urban issues rather than as an event to advocate the election of any single candidate.

⁴Given that section 441b uses "for purposes of this section" the term "contribution and expenditure" interchangeably, there can be no dispute that the statute's "in connection with" standard is applicable to both terms.

⁵Following the Supreme Court's denial of the FEC's petition for writ of certiorari from the First Circuit's decision in Faucher v. FEC, 928 F.2d 468 (9th Cir. 1991) the FEC withdrew its appeal.

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The express advocacy requirement, first announced by the Supreme Court in Buckley, seeks to limit the Act's potential to infringe on First Amendment rights by distinguishing the discussion of issues from the more pointed exhortations to vote for a particular candidate. See Buckley v. Valeo, 424 U.S. 1, 44, fn. 52 (1976); FEC v. NOW, 713 F.Supp. 428 (D.D.C. 1991); FEC v. Furgatch, 807 F.2d 857, 860 (9th Cir.) cert denied 484 U.S. 850 (1987). Indeed, in Faucher v. FEC, 928 F.2d 468 (1st Cir.) cert denied __ U.S. __ (1991), the First Circuit invalidated the FEC's voter guide restriction regulations on the grounds that the FEC had no authority to regulate matters involving issue advocacy.

Here, the FEC's debate regulation is again focused on the permissible funds that may be used to stage a nonpartisan candidate debate, a forum that by definition involves only issue advocacy. Accordingly, even a determination that the candidate debate regulations were violated cannot result in an impermissible contribution being made to the Clinton for President Committee. Expenditures by Lehman College, New York City or any other corporate entity to promote and discuss issues -- rather than to expressly advocate the election or defeat of a candidate for federal office -- are not expenditures in connection with a federal election. The complainants have simply failed to allege any violation of section 441b, or to allege facts which on their face are within the regulatory power of the FEC. Faucher v. FEC, 928 F.2d at 469. On the facts set

forth in the complaint, there can be no reason to believe that William J. Clinton or his principal campaign committee has violated the FECA.

II. THE LEHMAN COLLEGE DEBATE WAS STAGED BY A QUALIFIED
NONPROFIT EDUCATIONAL ORGANIZATION

Whether the FEC has the authority to regulate a nonpartisan candidate debate or not, the Lehman College debate was staged in accordance with FEC regulations. Indeed, the complaint acknowledges that Lehman College was a sponsor of the March 31 debate, and does not claim that it was improper or illegal for Lehman College to stage a nonpartisan debate. Rather, the complaint alleges that Lehman College's "partnership with a highly partisan and illegal co-sponsor" was a prohibited activity under federal election law (Complaint at ¶ 1). It alleges that Lehman College gave control over the debate to Bronx Borough President Fernando Ferrer, who used the resources of New York City to promote, organize, administer, and fund the debate. The allegations are false.

In fact, Lehman College was the staging organization for the March 31 debate. Lehman College printed the tickets (credentials) for the debate and provided the facilities and security for the event. Additionally, the College, in coordination with Mr. Ferrer and WABC-TV, publicized the debate, structured the debate format and formulated the broad issues and specific topics to be discussed, including the actual questions directed at the debate participants. In fact, Lehman College political science students actually drafted the questions to be

asked at the debate. See generally Response of Lehman College and Ricardo Fernandez.

Under 11 C.F.R. § 110.13(a), certain entities, including a "nonprofit organization which is exempt from federal taxation under 26 U.S.C. § 501(c)(3) and . . . § 501(c)(4)" may stage nonpartisan candidate debates. While not officially a 501(c)(3) or 501(c)(4) organization, Lehman College is technically a qualified nonprofit tax exempt educational organization that meets the organizational and operational tests of a 501(c)(3) and/or 501(c)(4).⁶ See also Response of Lehman College and Ricardo Fernandez.

The policies embodied in the Commission's regulations are to encourage debates staged by nonprofit organizations, not to condition such opportunities to educate the public on the ability of the staging organization to produce an official ruling from the Internal Revenue Service as to the organization's official tax status. Rather, the requirement that staging organizations have certain tax structures is predicated on the fact that such tax exempt entities must strictly limit their political activities. Limitations on the staging organization's political activities virtually assure the nonpartisanship of the staging

⁶As a unit of the City University of New York, Lehman college is a publicly funded, nonstock corporation which exists to provide post-secondary education in New York City. See N.Y. Educ. Law §§ 6201, 6203. As an instrumentality of the State of New York, Lehman College is treated as a qualified tax exempt entity and has, according to Lehman College, received official recognition as a tax exempt entity from the Internal Revenue Service.

organization, as well as the integrity and fairness of the debate process itself. See Explanation and Justification, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 864.

Such safeguards exist in this instance to recognize Lehman College as a nonprofit organization qualified under Commission regulations to stage a nonpartisan candidate debate. Lehman College is a recognized tax exempt entity that: 1) strictly limits its political activities to retain its tax exempt status and; 2) does not engage in electioneering activity. See Lehman College Response.

Thus, even if New York City were a co-sponsor of the debate, as the complaint alleges, that fact is irrelevant. As a qualified debate staging organization, Lehman College is permitted, under 11 C.F.R. § 114.4(e)(1) to accept "funds donated by corporations . . . to defray costs incurred in staging nonpartisan candidate debates. . . ." Conversely, New York City is permitted, under 11 C.F.R. § 114(e)(3) to "donate funds to nonprofit organizations qualified . . . to stage debates" Whatever expenditures New York City is alleged to have made, such expenditures were made either in connection with the promotion of the debate or were made to Lehman College to defray the costs of the debate. Neither Bill Clinton, nor his authorized committee were the beneficiaries of any expense by New York City or Fernando Ferrer which expressly advocated the election or defeat of any presidential candidate. Any contributions or expenditures made by New York City in helping defray the costs of the nonpartisan

Lehman College Debate were properly made within the scope of the Federal election laws, and do not constitute illegal corporate contributions or expenditures under 2 U.S.C. § 441b and 11 C.F.R. § 110.13.

C. THE NONPARTISAN CANDIDATE DEBATE WAS ADDITIONALLY STAGED BY BONA FIDE BROADCASTERS

According to Exhibit A to the Complaint, the nonpartisan candidate debate between William J. Clinton and Edmund G. Brown, Jr. at Lehman College's Center for the Performing Arts was also telecast live by Channel 7, WABC-TV and Channel 47, WNJU-TV. In addition, cable television's public affairs channel, C-Span broadcast the debate live to cable subscribers. Thus, while the actual debate may have taken place at Lehman College, the television stations also acted as the entity which staged the nonpartisan candidate debate for the purpose of educating and informing the millions of voters of New York City and New York State about the candidate's views on "housing, health care, crime and drugs, education and economic development" (Complaint, Exhibit A),

Under 11 CFR §§ 110.13(a)(2) and 114.4(e) a bona fide broadcaster may use its own funds to defray costs incurred in staging nonpartisan public candidate debates. This provision in the regulations is in recognition of the fact that adequate safeguards exist in the Communications Act, most specifically 47 U.S.C. § 315, and regulations promulgated by the Federal Communications Commission to assure that broadcast licensees such as Channels 7 and 47 will stage candidate debates on a

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nonpartisan basis. See Explanation and Justification, Fed. Elec. Camp. Guide (CCH) ¶ 864.

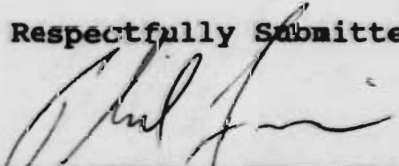
Under such circumstances, the financial assistance Lehman College or the City of New York may have provided in promoting the televised nonpartisan candidate debate was not in connection with a federal election. Rather such financial assistance was used to promote an issues forum devoid of any expressions expressly advocating the election or defeat of any specific candidate. Accordingly, there can be no reason to believe that there was a violation of the FECA.

CONCLUSION

For the foregoing reasons, the Commission should find no reason to believe that a violation of the FECA has occurred.

Dated: June 2, 1992

Respectfully Submitted



Anthony S. Harrington
General Counsel

Philip S. Friedman
Deputy General Counsel

Attorneys for Respondents
Clinton for President Committee,
Robert A. Farmer, as treasurer, and
the Honorable William J. Clinton



LAW DEPARTMENT

100 CHURCH STREET
NEW YORK, N.Y. 10007

O. PETER SHERWOOD
Corporation Counsel

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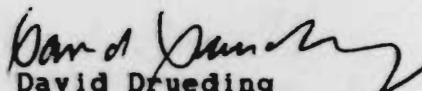
Dawn Odrowski
Office of the General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 3506

Dear Ms. Odrowski:

I am sending with this letter an additional copy of the Affidavit of Respondent Fernando Ferrer, which includes the original signature page. I am also sending you a Declaration of Service By Mail, reflecting service of my letter, dated May 28, 1992 and Mr. Ferrer's Affidavit upon counsel for the parties.

Very truly yours,


David Drueding
Assistant Corporation Counsel
(212) 788-0892

cc: Arthur Block, Esq.
Parker Chapin Flattau & Klimpl
Oxman & Jaroscak
Clinton For President Committee

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BEFORE THE FEDERAL ELECTION COMMISSION
UNITED STATES OF AMERICA

-----X
LAWRENCE A. AGRAN, EUGENE J.
MCCARTHY, LENORA B. FULANI, AND
RAPHAEL MENDEZ,

Complainants,

Case No. MUR 3506

v.

FERNANDO FERRER, Bronx Borough
President, CITY OF NEW YORK, RICARDO
FERNANDEZ, President of Lehman College,
LEHMAN COLLEGE, WILLIAM J. CLINTON,
CLINTON FOR PRESIDENT COMMITTEE,
EDMUND G. BROWN, JR., and BROWN FOR
PRESIDENT,

Respondents.

-----X
AFFIDAVIT OF RESPONDENT FERNANDO FERRER

STATE OF NEW YORK)
 : SS.:
COUNTY OF BRONX)

FERNANDO FERRER, being duly sworn, deposes and says:

1. I am the Bronx Borough President, the Borough's
highest elected official, and am responsible to the citizens of The
Bronx whom I represent.

2. I submit this affidavit in support of the request that
the Federal Election Commission take no action on the basis of the
complaint.

3. On March 31, 1992, Dr. Ricardo Fernandez, the
President of Lehman College, and I co-sponsored and co-moderated a

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"Debate for Urban America" between the major candidates for the Democratic Party's presidential nomination, former California Governor Edmund G. Brown, Jr. and Arkansas Governor William J. Clinton.

4. I co-sponsored the debate to foster discussion of the urban issues that are vital to my constituents, and to influence the presidential candidates to give greater attention to the problems of "The Bronx and all the Bronxes in urban America."

5. Lehman College provided the facilities and services to stage the debate, including use of Lehman College's Center for the Performing Arts and the printing of the tickets. To my knowledge, the College has received no financial help to stage the debate, except for \$3500 donated by Channel 47, WNJU-TV to cover the cost of a pre-debate reception and other expenses. The participating candidates got no honoraria or other payment, and bore the full cost of their participation, including transportation to Lehman College.

6. As co-sponsor, I assisted Lehman College in organizing the debate, but spent no City funds to underwrite the costs or to facilitate any candidate's participation. City funds were used only to the extent that I and my staff were involved, and therefore some part of the City funds appropriated for salaries and routine office expenses might be allocated to the debate.

7. I contacted and solicited the participation in the debate of the major candidates of both political parties. I invited President Bush and Mr. Buchanan, the major candidates for the Republican Party's nomination, and former Governor Brown, Governor Clinton, Senator Harkin, Senator Kerry, and former Senator Tsongas, the

major candidates for the Democratic Party's nomination. The President and Mr. Buchanan declined my invitation, and by the time of the debate Mr. Harkin, Mr. Kerry and Mr. Tsongas had withdrawn from the race.

8. My office assisted in the distribution of tickets to the debate. Of about 2000 tickets, 500 were allocated to Lehman College for use by its students and faculty. Another 300 (150 each) were given to the campaigns of the two participating candidates for distribution. About 100 were given to press and media representatives, and 200 to special guests (including New York City Mayor Dinkins and other public officials). The remaining 900 tickets were distributed through my office and Lehman College to the public on a first come, first served basis.

9. My office acted as liaison with Lehman College to coordinate media coverage. WABC-TV (Channel 7) produced the debate for broadcast. WABC-TV (Channel 7), C-Span, and WNYC Radio all broadcast the debate live, and WNJU-TV (Channel 47)(with a simultaneous translation to Spanish), WNYC-TV, and WNET-TV (Channel 13) broadcast the debate by tape delay.

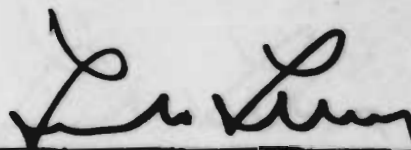
10. On the evening of the debate, Dr. Fernandez and I served as co-moderators of the one-hour debate. Under the debate's format, either Dr. Fernandez or I made a brief statement introducing a topic for discussion. Our statements set the agenda for the debate, describing the problems of housing, health care, crime and drugs, and economic development that confront The Bronx and urban American communities generally. Following each topic's introduction,

a panel of journalists, led by Bill Beutel of WABC-TV, posed specific questions to the candidates. (A videotape of the debate is Exhibit A to this Affidavit.)

11. Neither before nor during the debate did Dr. Fernandez or I advocate the nomination or election, or solicit a campaign contribution for, any presidential candidate.

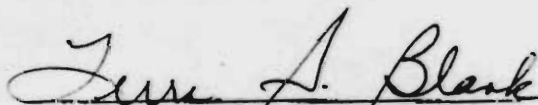
12. My co-sponsorship and participation in the "Debate for Urban America" did not involve advocacy of the election of a candidate for a federal office, or any expenditure or contribution on behalf of a candidate for federal office.

13. My co-sponsorship and participation in the debate served the First Amendment interest of my constituents in hearing discussion of the public issues that are important to their future, and in communicating to the candidates the importance I and my constituents attach to presidential candidates addressing the problems of Urban America.



FERNANDO FERRER

Sworn to before me this
25th day of May, 1992.



NOTARY PUBLIC

TERRI S. BLANK
Notary Public, State of New York
No. 03-07198
Qualified in Bronx County
Commission Expires March 30, 1992

TERRI S. BLANK
Notary Public, State of New York
No. 03-07198

Qualified in Bronx County
Commission Expires March 30, 1992
Not.

DECLARATION OF SERVICE BY MAIL

I, David Drueding, an attorney admitted to the practice of law before the United States Court of Appeals for the Second Circuit, the United States District Court for the Southern District of New York, and the Courts of the State of New York, declare that I served the foregoing Letter dated May 28, 1992, and the Affidavit of Fernando Ferrer (excepting the videotape which is Exhibit A), sworn to on May 28, 1992, by mailing copies on June 1, 1992 to the following:

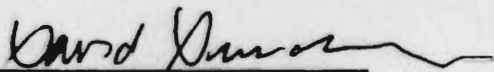
Arthur R. Block
Attorney for Complainants
250 West 57th Street, Suite 317
New York, New York 10019

Karen Lederer
Parker Chapin Flattau & Klimpl
Attorney for Respondents Lehman College and
its President, Dr. Ricardo Fernandez
1211 Avenue of the Americas
New York, New York 10036

Brian Oxman
Oxman & Jaroscak
Attorney for Respondents Edmund G. Brown and
Brown for President
14126 East Rosecrans Boulevard
Santa Fe Springs, California 90670

Philip Friedman
Deputy General Counsel
Attorney for Respondents William J. Clinton and
Clinton For President Committee
Clinton For President Committee
888 16th Street, N.W. (3d Floor)
Washington, D.C. 20006

Dated: June 1, 1992


DAVID DRUEDING
Assistant Corporation Counsel
100 Church Street, Room 6F46
New York, NY 10007

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ATTORNEY AT LAW

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

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January 11, 1993

Dawn Odrowski, Esq.
Office of General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 3506

Dear Ms. Odrowski:

I represent the complainants in the above-referenced proceeding. I am writing to bring to your attention a relevant federal court decision issued last week.

On January 5, 1993, the United States District Court for the Southern District of New York ruled in Fulani v. Brady, 92 Civ. 0998 (RWS)(copy enclosed), that an organization exempt from taxation under Internal Revenue Code § 501(c)(3) must use objective criteria to determine which candidates to invite to a candidates debate. Judge Sweet found that the criteria used by the League of Women Voters to select participants for its New Hampshire Democratic Party Primary Debate violated the Code. (See Slip Opinion at 31-37.)

Complainants allege that respondents Ferrer, Fernandez, Lehman College and the City of New York did not use objective criteria to determine which Democratic Party candidates would be invited to the presidential debate on urban issues in the Bronx. To the contrary, there is every reason to believe that the exclusion of candidates Agran and McCarthy, who had surmounted New York State's onerous ballot access requirements, was based on political judgments made by the respondents. Any "criteria" they may now put forward would be after-the-fact rationalizations.

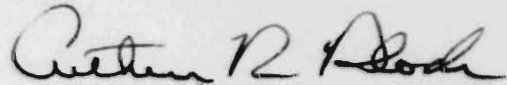
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Dawn Odrowski, Esq.
Office of General Counsel
January 11, 1993
Page 2

In short, corporate funds were used to stage
a federal candidate debate which was not nonpartisan as
required by FECA.

Very truly yours,



Arthur R. Block

ARB/ag
enc.

cc: Larry Agran, Esq.
Sen. Eugene McCarthy
Dr. Lenora B. Fulani
Dr. Rafael Mendez

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DR. LENORA B. FULANI and LENORA B.
FULANI FOR PRESIDENT,

Plaintiffs,

- against -

NICHOLAS F. BRADY, Secretary of
the Treasury, SHIRLEY D. PETERSON,
Commissioner of Internal Revenue,
and LEAGUE OF WOMEN VOTERS EDUCATION
FUND,

Defendants.

O P I N I O N

92 Civ. 0998 (RWS)

A P P E A R A N C E S:

ARTHUR R. BLOCK, ESQ.
Attorney for Plaintiffs
250 West 57th Street, Suite 317
New York, New York 10019

HON. OTTO G. OBERMAIER
United States Attorney for the
Southern District of New York
Attorney for Federal Defendants
100 Church Street
New York, New York 10007
By: KAY K. GARDINER, ESQ.
Assistant U.S. Attorney
Of Counsel

ARNOLD & PORTER
Attorney for Defendant League of Women Voters
Education Fund
199 Park Avenue
New York, New York 10022
By: MICHAEL D. SCHISSEL, ESQ.
Of Counsel

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Sweet, D.J.

The Defendants Nicholas F. Brady and Shirley D. Peterson (collectively, the "Federal Defendants"), joined by the Defendant League of Women Voters Education Fund (the "League"), have moved pursuant to Rule 12(b)(1) and (6), Fed. R. Civ. P., for an order dismissing the First Amended Complaint (the "Amended Complaint") of Plaintiffs Lenora B. Fulani and Lenora B. Fulani for President (collectively, "Fulani") for lack of subject matter jurisdiction or, in the alternative, for failure to state a claim upon which relief may be granted. For the reasons set forth below, the Defendants' 12(b)(1) motion is denied, but their 12(b)(6) motion is granted and the Amended Complaint is dismissed.

The Parties

Plaintiff Lenora B. Fulani is a self-described national political leader with a core constituency of African-American citizens. She is the chairperson of the New Alliance party and was the first woman and the first African-American to be on the ballot in each of the fifty states. Plaintiff Lenora B. Fulani for President is the political organization that ran Fulani's 1992 presidential campaign.

Defendant Nicholas F. Brady is the Secretary of the Treasury and Defendant Shirley D. Peterson is the Commissioner of Internal Revenue.

Defendant League of Women Voters (the "League") is a private, not-for-profit charitable trust established by the League of Women Voters of the United States ("LWVUS") in the District of Columbia in 1957 and devoted exclusively to educational purposes.¹

Prior Proceedings

On February 7, 1992, Fulani filed the original complaint in this action, which challenges the Federal Defendants' failure to enforce the non-electioneering prohibitions of § 501(c)(3), and which named Nicholas Brady, Secretary of the Treasury, and Shirley D. Peterson, Commissioner of Internal Revenue, as defendants. Fulani filed the Amended Complaint, naming the League as a party defendant, on February 13, 1992. Fulani sought a preliminary injunction compelling the Federal Defendants to revoke the League's tax-exempt status prior to the New Hampshire Democratic presidential primary debate cosponsored by the League and the Cable News Network ("CNN") and scheduled for February 16, 1992.

¹ LWVUS is a separate entity from the League and is not a party to this action.

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Fulani's motion for a temporary restraining order and a preliminary injunction was heard in Part I before the Honorable John E. Sprizzo. Judge Sprizzo, reading the opinion into the record from the bench, denied Fulani's motion. Fulani filed a notice of appeal of Judge Sprizzo's decision with the Second Circuit.² This Court granted the Federal Defendants' motion for a stay of discovery pending the decision of the Second Circuit. See Fulani v. Brady, No. 92 Civ. 0998 (RWS), 1992 U.S. Dist. LEXIS 7320 (S.D.N.Y. May 19, 1992). In July 1992, the Second Circuit dismissed the appeal as moot because the debate, which Fulani had sought to enjoin, had been held on February 16, 1992. See Fulani v. Brady, No. 92-6047 (2d Cir. July 31, 1992).

The Federal Defendants now move for dismissal of Fulani's Amended Complaint on the ground that either this Court does not have jurisdiction over the subject matter of this action because Fulani does not have standing to sue the League and the Federal Defendants, or that, even if Fulani does have standing, she has failed to state a claim upon which relief may be granted.

² Fulani also moved for a stay of the Debate pending the decision of the Second Circuit. On February 14, 1992, the motion was denied insofar as it sought a preliminary injunction directing the federal defendants to suspend or revoke the League's tax exempt status prior to the debate on February 16, 1992. Fulani subsequently withdrew her motion for a stay pending appeal.

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This motion was filed by the Federal Defendants on July 7, 1992. The Court heard oral arguments and considered the motion fully submitted on September 23, 1992.

Facts³

Since its founding in 1957, the League has frequently sponsored Democratic and Republican presidential primary debates, and presidential and vice-presidential general election debates. In 1984, the League sponsored four Democratic presidential primary debates, one vice-presidential general election debate, and two presidential general election debates. In 1988, the League sponsored one Republican presidential primary debate and two Democratic presidential primary debates. The purpose of the League's primary debates is to educate the nation's electorate about the issues and the positions of the candidates running in the primary election campaigns, and to stimulate voter interest and participation in the electoral process.

Fulani ran for the presidency of the United States in 1988 as an independent and minor party candidate. In response to

³ As is discussed in detail below, on the face of a Rule 12(b) motion to dismiss, a plaintiff's factual allegations are presumed to be true and all factual inferences are drawn in the plaintiff's favor. Therefore, the factual allegations set forth here do not constitute findings of fact by the Court but rather are taken from Fulani's Amended Complaint and the Joint Appendix prepared in cooperation by the parties for the appeal before the Second Circuit of Judge Sprizzo's denial of Fulani's motion for a temporary restraining order and preliminary injunction.

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her exclusion from the League-sponsored presidential primary debates, Fulani filed an action against the League and moved for a temporary restraining order and preliminary injunction against the League. See Fulani v. League of Women Voters Educ. Fund, 684 F. Supp. 1185 (S.D.N.Y. 1988) ("Fulani I"). This Court denied that motion, and the Second Circuit affirmed and dismissed the action. See Fulani v. League of Women Voters Educ. Fund, 882 F.2d 621 (2d Cir. 1989) ("Fulani II").

After being excluded from the 1988 presidential debates sponsored by the Commission on Presidential Debates ("CPD"), Fulani brought an action against the Federal Defendants and the CPD in the District Court for the District of Columbia, seeking the revocation of the CPD's tax-exempt status. The court dismissed the action, see Fulani v. Brady, 729 F. Supp. 158 (D.D.C. 1990), and a divided Court of Appeals affirmed. See Fulani v. Brady, 935 F.2d 1324 (D.C. Cir. 1991), cert. denied, ___ U.S. ___, 112 S. Ct. 912 (1992) (Mikva, C.J., dissenting) ("Fulani III").

In February 1991, Fulani declared her candidacy for the presidency in the 1992 race. She began as an independent and minor party candidate, while calling upon Rev. Jesse Jackson to compete for the Democratic party nomination and pledging that she would support him in 1992, as she and her supporters had done in 1984 and 1988. Fulani organized a campaign structure that qualified her for federal matching funds in the 1992 race ahead of all the other

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candidates of both major parties, and in December 1991, the Federal Elections Commission ("FEC") announced that Fulani had raised more matchable contributions than President George Bush and Tom Harkin.

When Rev. Jackson announced that he would not seek the Democratic party nomination in 1992, Fulani entered the Democratic party race. On December 17, 1991, she filed as a candidate in the New Hampshire Democratic party primary, and her ballot access counsel gave routine notice to the FEC that she was entering a number of Democratic party nominating contests. Fulani immediately set up a fully staffed campaign and press office in Manchester, New Hampshire, and re-oriented her full-time itinerary of campaign appearances to focus on that state.

The New Hampshire Democratic party (the "State Party") planned a series of debates before live audiences among "major" candidates for the party's nomination. The most significant debates were scheduled for three Sundays -- December 19, 1991, in Nashua, January 19, 1992, in Manchester, and February 10, 1992, in Claremont. Fulani was told that she did not qualify for inclusion in the debates because she had never held statewide office.

Fulani, however, ended up participating in the Nashua debate. At the beginning of that debate another insurgent Democrat, former Mayor of Irvine, California, Larry Agran, stood up in the audience and protested his exclusion. The moderator

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instructed police officers to physically eject Agran from the room. Spontaneously, members of the audience shouted protests and asked for Agran and then Fulani to be included, which they were.

In planning for the subsequent debates, the State Party publicly stated that Fulani and Agran would not be included in any further party-sponsored debates. To avoid a repeat of the Nashua call for the insurgent candidates from the audience, the State Party moved the Manchester debate to a closed television studio, which drew the wrath of hearty protestors who picketed the studio in sub-zero weather. Rather than attempt to hold another exclusionary debate before an audience of rank and file democrats, the State Party finally decided simply to cancel the Claremont debate altogether.

In 1992, the League agreed with the Cable News Network ("CNN") to co-sponsor one Democratic party presidential primary debate and one Republican presidential primary debate prior to the New Hampshire primary. The Democratic party debate (the "Debate") was scheduled to be held in St. Anselm on February 16, 1992, two days before the New Hampshire primary election. The events surrounding the Democratic primary debate are the focus of Fulani's complaint.

In January 1992, Fulani's campaign inquired of the League regarding her inclusion in the Debate. In a letter dated January

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16, 1992, the League provided the Fulani campaign with its "New Hampshire Democratic Presidential Primary Debate Participation Criteria" ("Selection Criteria") and gave Fulani until January 24 to demonstrate that she qualified to be included under the Selection Criteria. Fulani submitted a detailed analysis, complete with full documentation, to show that her candidacy met all of the Selection Criteria. The League responded with a pro-forma rejection dated January 23, 1992 and denied Fulani's request on the ground that she did not meet the League's Selection Criteria because she was not a "significant" candidate for the Democratic party's nomination for president.

Fulani made a written demand on the Federal Defendants to revoke the League's tax exemption prior to the Debate, because the League acted in a partisan manner, violating the statutes proscribing the involvement of tax exempt organizations in the political arena. The Internal Revenue Service ("IRS") responded that it would not be able to inform Fulani as to what action, if any, it might take in response to her demand. She then commenced this action, and sought a preliminary injunction against the IRS, which was denied by Judge Sprizzo, sitting in Part I, on February 13, 1992, and the following day the Second Circuit denied Fulani's application for an interim stay of the Debate pending appeal. The League-sponsored Debate was held on February 16, 1992.

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Fulani contends that the harm to her caused by the certification by the United States government that her exclusion by the League was based on a nonpartisan and fair judgment that she was an insignificant candidate would have been eliminated. In Fulani's view, the IRS compounded the injury by explicitly stating in writing in a public document that it approved of the League's determination that Fulani's candidacy was insignificant.

Fulani also alleges that she continues to be injured by the policy of the IRS by which it permits tax exempt debate sponsors to select candidates. According to Fulani, the permitted use of subjective criteria to determine participation the debates makes it impossible for an insurgent or independent candidate to know what must be accomplished in order to qualify to participate in the debates. This has a chilling effect on supporters and allies of campaigns such as hers because the candidate cannot plan to meet objectives that should ensure inclusion in the debates sponsored by IRS-certified nonpartisan voter education organizations.

Discussion

The League is exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3) of the Internal Revenue Code. This section provides that a tax-exempt organization may not:

participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Id. The Treasure Department regulation addressing the application of this nonpartisanship requirement provides that:

[a]ctivities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

Treas. Reg. (26 C.F.R.) 1.501(c)(3)-1(c)(3)(iii). See Rev. Rul. 67-71, 1967-1 C.B. 125 (1967).

The regulations of the FEC, an independent federal agency, provide that nonpartisan candidate debates may be staged by (1) non-profit organizations that are exempt from federal taxation under § 501, (2) nonprofit organizations that are exempt from federal taxation under 26 U.S.C. § 501(c)(4) and that do not "endorse, support or oppose political candidates or political parties," and (3) broadcasters, bona fide newspapers, magazines and other periodical publications. 11 C.F.R. § 110.13(a). The FEC regulations leave the structure of any such debates to the discretion of the staging organization "provided that (1) such debates include at least two candidates, and (2) such debates are nonpartisan in that they do not promote or advance one candidate over another." 11 C.F.R. § 110.13(b).

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Fulani alleges that she has been directly injured by the status and actions of the League as a tax exempt organization, and as such she has standing to bring an action against the government organs responsible for certifying the League's tax-exempt status and compel them to revoke that status.

I. Fulani Has Standing

The Federal Defendants challenge Fulani's standing to bring this action in their motion to dismiss the Amended Complaint pursuant to Rule 12(b)(1) on the ground that this Court lacks jurisdiction over the subject matter of this action. In considering the issue of whether Fulani has standing to bring this action, it must be noted at the outset that this Court is not writing on a clean slate. In Fulani II, the Second Circuit held that Fulani did have standing to challenge the tax-exempt status of the League in her action against the League, the Secretary of the Treasury, and the Commission^r of Internal Revenue. At issue in that action was Fulani's exclusion from the debates sponsored by the League during the 1988 presidential campaign.

In Fulani III, over the dissent of Chief Judge Mikva, the D.C. Circuit affirmed the trial court's dismissal of Fulani's complaint in which she challenged the tax-exempt status of the

Commission for Presidential Debates. The D.C. Circuit summarized Fulani's allegations as follows:

Fulani contends that she is injured by the fact that the CPD is engaging in a program of political misinformation, perpetuating bipartisan, rather than nonpartisan, political debates. This program . . . advocates and perpetuates a two-party system, giving the false impression that there are only two legitimate candidates for presidential office. . . . [T]his misinformation program directly injured her by depriving her of the media coverage and political legitimacy necessary to her campaign[and] violates § 501(c)(3)'s mandate that tax exempt organizations not engage in partisan political activities.

Fulani III, 935 F.2d at 1324.

The D.C. Circuit noted that third-party litigation of another's tax-exempt status is inconsistent with, if not precluded by, the statutory scheme created by Congress and rejected Fulani's assertion of "competitor standing" to challenge the CPD's tax-exempt status, see id. at 1327,* and concluded that "where a party is seeking simply to remove a third party's entitlement to a tax exemption, the exemption likely will not bear sufficient links of

* See also Clarke v. Securities Indus. Ass'n, 479 U.S. 388 (1987) (securities brokers had standing to challenge ruling that national banks could act as discount brokers); Investment Co. Inst. v. Camp, 401 U.S. 617 (1971) (open-end investment companies had standing to challenge ruling that banks could deal in collective investment funds); Association of Data Processing Serv. Orgs., Inc. v. Camp, 397 U.S. 150 (1970) (data processing agency had standing to challenge rulings by the Comptroller of the Currency allowing national banks to enter the data processing field).

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traceability and redressability to the alleged injury to warrant standing under Allen . . ." Id. at 1328.

The D.C. Circuit declined to follow the Second Circuit's reasoning in Fulani II on the ground that:

the Second Circuit ignores the fact that the alleged traceability and redressability may be found in [Fulani II] -- and could be found in the present case -- only in combination with significant intervening causal factors[, including the FEC's regulations, the CPD's actions, and the anticipated behavior of other debate participants].

Fulani III, 935 F.2d at 1329.⁵

In the matter at hand, the Federal Defendants assert that the Second Circuit's holding in Fulani II cannot be followed here because the injury alleged here is "highly conjectural" in contrast to the "much more concrete and direct" injury alleged in Fulani II. Defs.' Mem. 17.

Unlike Fulani II, plaintiffs here do not contend that the injury they have suffered is the media exposure Fulani did not receive because of her exclusion from the New Hampshire debate. The complaint makes clear that the alleged harm is the League's purportedly nonpartisan "imprimatur" of the significance of the candidates included in the debates, and

⁵ The D.C. Circuit also noted the unique position of the CPD insofar as it "does not have the option of abandoning its tax-exempt status; the CPD may sponsor the presidential debates only if it receives tax-exempt status from the IRS and is therefore not free, as were the hospitals in Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26 (1976)], to continue its activities as a profit-funded organization." Id. at 1330.

the arguably implied message from the League that candidates who are not invited to the debate are not worthy of consideration by voters as potential Democratic nominees.

Id. at 12-13.

In deciding Fulani's motion for a preliminary injunction in the present action, Judge Sprizzo adopted the Federal Defendants' reasoning, distinguished the present action from that in Fulani II, and concluded that Fulani does not have standing:

So I am left with the claim that the standing and/or irreparable injury . . . consists of some competitive disadvantage that [Fulani] will suffer from the indirect endorsement of an educational nonpartisan organization of the five other candidates whom the [League] has invited to speak. I find that entirely too speculative and too insubstantial under the case law to confer standing upon her, even given the most generous reading of the Second Circuit's opinion in Fulani II.

If I take that abortion rights case, . . . I think that the holding there as to the lack of competitive injury sufficient to confer standing . . . makes it very clear that if that circumstance was not sufficient in that case, then it surely is not sufficient in this case.

Tr. 33. However, in light of the more substantial record on this motion than was before Judge Sprizzo, the Court respectfully declines to follow Judge Sprizzo's preliminary conclusions on the issue of standing and concludes that Fulani does satisfy the threshold requirement of standing to bring and maintain this action.

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A. The Criteria for Standing

It is well-established that "the burden is on the party claiming jurisdiction to demonstrate that the court has jurisdiction over the subject matter." International Shipping Co., S.A. v. Hydra Offshore, Inc., 675 F. Supp. 146, 151 & n.5 (S.D.N.Y. 1987), aff'd, 875 F.2d 388 (2d Cir.), cert. denied, 493 U.S. 1003 (1989). See also McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 189 (1936); Kheel v. Port of New York Authority, 457 F.2d 46, 49 (2d Cir.), cert. denied, 409 U.S. 983 (1972). Standing is an essential element of subject matter jurisdiction, and the question presented is whether this action should be dismissed for lack of subject matter jurisdiction because Fulani does not have standing to bring it.

The fundamental principles governing whether a plaintiff has standing to maintain an action in federal court are straightforward and familiar. A plaintiff must "allege[]" such a personal stake in the outcome of the controversy as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial power on his behalf." Warth v. Seldin, 422 U.S. 490, 498-99 (1975) (internal quotation omitted). The "core component" of standing, derived directly from the "cases of controversies" requirement of Article III of the Constitution, requires the plaintiff to "allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be

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redressed by the requested relief." Allen v. Wright, 468 U.S. 737, 751 (1984) (emphasis added). The alleged injury cannot be "abstract" in character, O'Shea v. Littleton, 414 U.S. 488, 494 (1974); it must be "distinct and palpable," Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 100 (1979) (internal quotation omitted). The Supreme Court has explained that the requirements for standing arise out of a "single basic idea -- the idea of separation of powers," Allen, 468 U.S. at 752, because they demarcate fundamental limits on the role of the federal courts in our tripartite system of government.⁶

The Second Circuit has prescribed the following test to determine whether plaintiffs have the requisite standing, noting that, while it is "[d]eceptively simple to state, standing entails a complex three-pronged inquiry":

First, plaintiffs must show that they have suffered an injury in fact that is both concrete in nature and particularized to them. Second, the injury must be fairly traceable to defendants' conduct. Third, the injury must be redressable by

⁶ In addition to these constitutional requirement, the Supreme Court has also recognized that the standing doctrine embraces certain prudential limitations on the exercise of federal jurisdiction, including "the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches." Allen, 468 U.S. at 751. The Supreme Court has summarized this aspect of the standing inquiry as "[e]ssentially, . . . whether the constitutional or statutory provisions on which the claim rests properly can be understood as granting persons in the plaintiff's position a right to judicial relief." Warth, 422 U.S. at 500 (footnote omitted). In short, a federal court "is not the proper forum to press general complaints about the way in which government goes about its business." Allen, 468 U.S. at 760 (citation and internal quotation omitted).

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removal of defendants' conduct. The second and third prongs - traceability and redressability -- often dovetail; essentially, both seek a causal nexus between the plaintiff's injury and the defendant's assertedly unlawful act. To establish standing, a plaintiff must plead all three elements.

In re United States Catholic Conference, 885 F.2d 1020, 2034-24 (2d Cir. 1989).

In Fulani II, the Second Circuit adopted the Supreme Court's approach in Allen, 468 U.S. at 752, and translated the concepts underlying the three-pronged test into three questions it suggested the trial court keep in mind while conducting its standing inquiry:

Is the injury too abstract, or otherwise not appropriate, to be considered judicially cognizable? Is the line of causation between the illegal conduct and inquiry too attenuated? (And) is the prospect of obtaining relief from the injury as a result of a favorable ruling too speculative?

882 F.2d at 624 (internal quotation omitted).

Before turning to Fulani's allegations and subjecting them to the three-part inquiry, the nature of those allegations makes it is important to note that the Supreme Court and lower courts have routinely rejected attempts by plaintiffs to challenge the tax-exempt status of third parties. See Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 42-43 (1976) (indigent plaintiffs held to lack standing in an action challenging the IRS

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ruling which allowed nonprofit hospitals to qualify as § 501(c)(3) charitable organizations even when they provided only emergency room services to the indigent); Allen, 468 U.S. at 754 (black parents held to lack standing to challenge the tax-exempt status of discriminatory private schools); American Soc'y of Travel Agents, Inc. v. Blumenthal, 566 F.2d 145 (D.C. Cir. 1977), cert. denied, 435 U.S. 947 (1978) (travel agents' challenge of favorable tax treatment of religious groups that conducted charter tours was too speculative to confer standing); Catholic Conference, 885 F.2d at 1020 (action by pro-choice abortion rights supporters challenging the tax-exempt status of the Catholic Church dismissed for failure to allege injury in fact and because pro-choice organizations were not competitors of the Catholic Church). However, these cases are distinguishable from the case at hand because Fulani's alleged injury satisfies the standing criteria as being "judicially cognizable," "fairly traceable," and "redressable".

As Fulani points out, the courts have also recognized a plaintiff's standing to bring an action when it is alleged that unconstitutional conduct by government officials creates or supports structural inequalities in the electoral system. In Baker v. Carr, 369 U.S. 186 (1962), the Supreme Court phrased the "gist of the question of standing" as: "Have the appellants alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of

MUR # 3506

ADDITIONAL DOCUMENTS WILL BE ADDED TO THIS FILE AS THEY
BECOME AVAILABLE. PLEASE CHECK FOR ADDITIONAL MICROFILM
LOCATIONS.

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

☒ Microfilm
☐ Public Records
☐ Press

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 3506.

12/10/99

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THE READER IS REFERRED TO ADDITIONAL MICROFILM LOCATIONS
FOR THE FOLLOWING DOCUMENTS PERTINENT TO THIS CASE

1. Memo, General Counsel to the Commission, dated September 22, 1992, Subject: Priority System Report.
See Reel 354, pages 1590-94.
2. Memo, General Counsel to the Commission, dated April 14, 1993, Subject: Enforcement Priority System.
See Reel 354, pages 1595-1620.
3. Certification of Commission vote, dated April 28, 1993.
See Reel 354, pages 1621-22.
4. General Counsel's Report, In the Matter of Enforcement Priority, dated December 3, 1993.
See Reel 354, pages 1623-1740.
5. Certification of Commission vote, dated December 9, 1993.
See Reel 354, pages 1741-1746.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 10 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

RE: MUR 3506

Dear Mr. Block:

On April 17, 1992, the Federal Election Commission received your complaint on behalf of your clients, Lawrence A. Agran, Eugene McCarthy, Lenora B. Fulani, and Rafael Mendez, alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against Fernando Ferrer, personally, and as President of the Borough of the Bronx; the City of New York; Ricardo Fernandez, as President of Lehman College; Lehman College; President William J. Clinton; the Clinton for President Committee and Robert A. Farmer, as treasurer; Edmund G. Brown, Jr.; and Brown for President and Blaine Quick, as treasurer. See attached narrative. Accordingly, the Commission closed its file in this matter.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Dawn M. Odrowski

Dawn M. Odrowski
Attorney

Attachment:
Narrative

Date the Commission voted to close the file: DEC 8 1993

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MUR 3506

FERNANDO FERRER, ET AL.

Lenora Fulani and three candidates on the ballot in the New York Democratic Primary filed a complaint alleging the City of New York and Lehman College made prohibited contributions to, or expenditures on behalf of, the Clinton and Brown presidential committees in connection with a pre-primary candidate debate held at Lehman College between Democratic candidates Clinton and Brown. Complainants allege that the debate was not organized in a nonpartisan matter or sponsored by an appropriate non-profit entity or news organizations pursuant to 11 C.F.R. §§ 110.13 and 114.4(e)(3). Complainants also allege the Clinton and Brown presidential committees improperly accepted any contributions resulting from the cosponsors' actions. Respondents indicate that Lehman College, a unit of the City University of New York, a public university, and Bronx Borough President Fernando Ferrer organized the primary debate which was televised live by WABC-TV, the broadcast producer, WNYC-Radio and C-Span. Respondents also maintain that none of the sponsors expressly advocated the election or defeat of any candidate.

Several issues regarding debate sponsorship have been raised in the context of the ongoing MCFL rulemaking proceeding. Additionally, in this case, no serious intent to violate the FECA is evidenced by respondents.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 10 1993

R. Brian Oxman
Oxman and Jaroscak
14126 East Rosecrans Boulevard
Santa Fe Springs, CA 90670

RE: MUR 3506
Edmund G. Brown, Jr.,
Brown for President and
Blaine Quick, as treasurer

Dear Mr. Oxman:

On April 24, 1992, the Federal Election Commission notified your clients of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against Edmund G. Brown, Jr. and Brown for President and Blaine Quick, as treasurer. See attached narrative. Accordingly, the Commission closed its file in this matter.

The confidentiality provisions of 2 U.S.C. § 437g(a)(2) 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

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

Sincerely,

Dawn M. Odrowski

Dawn M. Odrowski
Attorney

Attachment:
Narrative

Date the Commission voted to close the file: DEC 8 1993

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MUR 3506

FERNANDO FERRER, ET AL.

Lenora Fulani and three candidates on the ballot in the New York Democratic Primary filed a complaint alleging the City of New York and Lehman College made prohibited contributions to, or expenditures on behalf of, the Clinton and Brown presidential committees in connection with a pre-primary candidate debate held at Lehman College between Democratic candidates Clinton and Brown. Complainants allege that the debate was not organized in a nonpartisan matter or sponsored by an appropriate non-profit entity or news organizations pursuant to 11 C.F.R. §§ 110.13 and 114.4(e)(3). Complainants also allege the Clinton and Brown presidential committees improperly accepted any contributions resulting from the cosponsors' actions. Respondents indicate that Lehman College, a unit of the City University of New York, a public university, and Bronx Borough President Fernando Ferrer organized the primary debate which was televised live by WABC-TV, the broadcast producer, WNYC-Radio and C-Span. Respondents also maintain that none of the sponsors expressly advocated the election or defeat of any candidate.

Several issues regarding debate sponsorship have been raised in the context of the ongoing MCFL rulemaking proceeding. Additionally, in this case, no serious intent to violate the FECA is evidenced by respondents.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 10 1993

Philip S. Friedman, Esquire
Ross & Hardies
888 16th Street, N.W. Suite 300
Washington, DC 20006

RE: MUR 3506
President William J. Clinton
Clinton for President Committee and
Robert A. Farmer, as treasurer

Dear Mr. Friedman:

On April 24, 1992, the Federal Election Commission notified your clients of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against President William J. Clinton and the Clinton for President Committee and Robert A. Farmer, as treasurer. See attached narrative. Accordingly, the Commission closed its file in this matter.

The confidentiality provisions of 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

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Philip S. Friedman, Esquire
Page 2

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

Sincerely,

Dawn M. Odrowski

Dawn M. Odrowski
Attorney

Attachment
Narrative

Date the Commission voted to close the file: DEC 09 1993

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MUR 3506

FERNANDO FERRER, ET AL.

Lenora Fulani and three candidates on the ballot in the New York Democratic Primary filed a complaint alleging the City of New York and Lehman College made prohibited contributions to, or expenditures on behalf of, the Clinton and Brown presidential committees in connection with a pre-primary candidate debate held at Lehman College between Democratic candidates Clinton and Brown. Complainants allege that the debate was not organized in a nonpartisan matter or sponsored by an appropriate non-profit entity or news organizations pursuant to 11 C.F.R. §§ 110.13 and 114.4(e)(3). Complainants also allege the Clinton and Brown presidential committees improperly accepted any contributions resulting from the cosponsors' actions. Respondents indicate that Lehman College, a unit of the City University of New York, a public university, and Bronx Borough President Fernando Ferrer organized the primary debate which was televised live by WABC-TV, the broadcast producer, WNYC-Radio and C-Span. Respondents also maintain that none of the sponsors expressly advocated the election or defeat of any candidate.

Several issues regarding debate sponsorship have been raised in the context of the ongoing MCFL rulemaking proceeding. Additionally, in this case, no serious intent to violate the FECA is evidenced by respondents.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 10 1992

Karen F. Lederer, Esquire
Parker Chapin Flattau & Klimpl
1211 Avenue of the Americas
New York, NY 10036

RE: MUR 3506
Lehman College and
Dr. Ricardo Fernandez, as President

Dear Ms. Lederer:

On April 24, 1992, the Federal Election Commission notified your clients of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against Lehman College and Dr. Ricardo Fernandez, as President. See attached narrative. Accordingly, the Commission closed its file in this matter.

The confidentiality provisions of 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

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

Sincerely,

Dawn M. Odrowski

Dawn M. Odrowski
Attorney

Attachment
Narrative

Date the Commission voted to close the file:

DEC 09 1993

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MUR 3506

FERNANDO FERRER, ET AL.

Lenora Fulani and three candidates on the ballot in the New York Democratic Primary filed a complaint alleging the City of New York and Lehman College made prohibited contributions to, or expenditures on behalf of, the Clinton and Brown presidential committees in connection with a pre-primary candidate debate held at Lehman College between Democratic candidates Clinton and Brown. Complainants allege that the debate was not organized in a nonpartisan matter or sponsored by an appropriate non-profit entity or news organizations pursuant to 11 C.F.R. §§ 110.13 and 114.4(e)(3). Complainants also allege the Clinton and Brown presidential committees improperly accepted any contributions resulting from the cosponsors' actions. Respondents indicate that Lehman College, a unit of the City University of New York, a public university, and Bronx Borough President Fernando Ferrer organized the primary debate which was televised live by WABC-TV, the broadcast producer, WNYC-Radio and C-Span. Respondents also maintain that none of the sponsors expressly advocated the election or defeat of any candidate.

Several issues regarding debate sponsorship have been raised in the context of the ongoing MCFL rulemaking proceeding. Additionally, in this case, no serious intent to violate the FECA is evidenced by respondents.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

DEC 10 1993

O. Peter Sherwood, Esquire
Corporation Counsel of the City of New York
ATTN: David Drueding, Esquire
Assistant Corporation Counsel
100 Church Street, Room 6F46
New York, NY 10007

RE: MUR 3506
City of New York
Fernando Ferrer personally, and as
President of the Borough
of the Bronx

Dear Mr. Drueding:

On April 24, 1992, the Federal Election Commission notified your clients of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the City of New York and Fernando Ferrer personally, and as President of the Borough of the Bronx. See attached narrative. Accordingly, the Commission closed its file in this matter.

The confidentiality provisions of 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

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David Drueding, Esquire
Page 2

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

Sincerely,

Dawn M. Odrowski

Dawn M. Odrowski
Attorney

Attachment
Narrative

Date the Commission voted to close the file: DEC 09 1993

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MUR 3506

FERNANDO FERRER, ET AL.

Lenora Fulani and three candidates on the ballot in the New York Democratic Primary filed a complaint alleging the City of New York and Lehman College made prohibited contributions to, or expenditures on behalf of, the Clinton and Brown presidential committees in connection with a pre-primary candidate debate held at Lehman College between Democratic candidates Clinton and Brown. Complainants allege that the debate was not organized in a nonpartisan matter or sponsored by an appropriate non-profit entity or news organizations pursuant to 11 C.F.R. §§ 110.13 and 114.4(e)(3). Complainants also allege the Clinton and Brown presidential committees improperly accepted any contributions resulting from the cosponsors' actions. Respondents indicate that Lehman College, a unit of the City University of New York, a public university, and Bronx Borough President Fernando Ferrer organized the primary debate which was televised live by WABC-TV, the broadcast producer, WNYC-Radio and C-Span. Respondents also maintain that none of the sponsors expressly advocated the election or defeat of any candidate.

Several issues regarding debate sponsorship have been raised in the context of the ongoing MCFL rulemaking proceeding. Additionally, in this case, no serious intent to violate the FECA is evidenced by respondents.

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