WINER MEHEULA & DEVENS

DAVID F. FASI (6037)
Suite A-300, Pali Palms Plaza
970 N. Kalaheo Avenue
Kailua, Hawaii 96734
Tel. No. 254-5855

SENSITIVE

Attorneys for Respondents
Friends For Fasi and William Rose,
as Treasurer, and Frank Fasi

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
	)	MUR 4594
Friends For Fasi and William Rose, as Treasurer, and Frank Fasi	)	
	)	

RESPONSE OF FRIENDS FOR FASI AND WILLIAM ROSE, AS TREASURER, AND FRANK FASI TO FEDERAL ELECTION COMMISSION GENERAL COUNSEL'S BRIEF DATED APRIL 7, 1999

Respondents Friends For Fasi and William Rose, as Treasurer, and Frank Fasi (hereinafter "Fasi Respondents"), by and through their attorneys, Winer Meheula & Devens, hereby submit this response to the Federal Election Commission ("FEC") General Counsel's Brief ("Brief") dated April 7, 1999.

I. STATEMENT OF THE CASE

This matter concerns a written lease that was entered into between Frank Fasi and Longevity International Enterprises Corporation ("Longevity") in 1981, and orally extended in 1984 on a month-to-month basis, for an office space located in the Chinese Cultural Plaza Shopping Center ("Cultural Plaza"), at 100 North Beretania Street, Honolulu, Hawaii 96817. The leased space was initially intended to be used, and was used, as storage space for Mr. Fasi's

documents and objects acquired over a twelve year period as Mayor of the City and County of Honolulu. Both at the time that the lease was entered into in 1981, and when it was orally extended in 1984, Mr. Fasi was not an elected official. In 1984, as the 1981 lease was about to expire, Frank Fasi informed Longevity that the Cultural Plaza space was much too large for his needs for storage space and that he only required less than 800 square feet. Mr. Fasi informed Longevity of his intention to move out of the Cultural Plaza space and find a more suitable space for his needs. In the alternative, Mr. Fasi offered to continue renting space from Longevity but only at a rate of $800.00 per month. Mr. Fasi informed Longevity of his unwillingness to pay any more than $800.00 for the leased space but that he would be happy to move to much smaller space in the Cultural Plaza. Eventually, Mr. Fasi and Longevity agreed that the lease would be on a month-to-month basis for the same space and that Longevity could terminate the month-to-month agreement if it found another tenant. Mr. Fasi also informed Longevity that he preferred that the space he actually used be partitioned from the rest of the space, but Longevity did not want to undergo the great expense of partitioning the space. Only a portion of the leased Cultural Plaza space was subsequently used as a campaign headquarters for Friends For Fasi and only in two to six month periods in the years 1982, 1984, 1988, 1992, 1994 and 1996. In 1982 and 1994, Mr. Fasi was a candidate for the office of Governor of the State of Hawaii, and in 1984, 1988, 1992 and 1996, Mr. Fasi was a candidate for the office of Mayor of the City and County of Honolulu. At all other time periods (approximately 80% to 90% of the time period from 1981 to 1996), the office space was used only as storage space and not for any elections and/or campaigns, and was also subsequently used by the Frank Fasi Charitable Foundation, a non-profit charitable organization. For some periods, the office space would remain locked for months at a time. Mr. Fasi was neither an elected official nor a candidate for public office at the

time the subject lease was entered into in 1981. **Mr. Fasi has never been a candidate, nor campaigned, for federal office during the entire time period of the Cultural Plaza lease.**

Although the FEC General Counsel has "found reason to believe that [Fasi Respondents] violated 2 U.S.C. § 441e" by "accepting in-kind contributions from Longevity, a foreign national controlled and financed corporation, in the form of reduced rental costs at the Cultural Plaza," Fasi Respondents respectfully submit that there are insufficient factual and legal grounds to proceed with this matter and that this matter should, thus, be dismissed. This matter should be dismissed because: 1) **as a matter of law**, 2 U.S.C. § 441e does not apply to state and local elections; 2) **as a matter of law**, the statute of limitations bars this claim; and, 3) the factual grounds which this claim is based are either incorrect and/or based on unsubstantiated hearsay.

II. ARGUMENT

A. As a Matter of Law, 2 U.S.C. § 441e Does Not Apply to State and Local Elections

Fasi Respondents renew their argument that the FEC lacks jurisdiction to proceed with this claim since 2 U.S.C. § 441e does not apply to state and local elections. Mr. Fasi was never a candidate for federal office during the period of the Cultural Plaza lease. This fact is undisputed. Yet the FEC brings this claim against Fasi Respondents for a potential violation of 2 U.S.C. § 441e. In support of its argument that non-federal political campaigns are subject to the restrictions of 2 U.S.C. § 441e, the FEC General Counsel cites only to the FEC's own self-serving advisory opinions, campaign guides and past administrative decisions. It is worth noting, however, that past FEC administrative interpretations and decisions have been overturned and/or not followed by the Supreme Court and other Courts of Appeal. *See*, e.g. Chamber of Commerce v. FEC, 76 F.3d 1234 (D.C. Cir.1996); Simon v. FEC, 53 F.3d 356 (D.C. Cir.1995).

While the FEC General Counsel relies on its own self-serving interpretations to support

its argument in its Brief, the General Counsel summarily dismisses the independent and controlling case law regarding this subject in a footnote to its Brief. *See* FEC General Counsel's Brief filed April 7, 1999, footnote , at page 2.

U.S. v. Trie, 21 F.Supp.2d 7, is the controlling case law for this matter. In U.S. v. Trie, one of the main issues was whether 2 U.S.C. § 441e applied to foreign contributions to state and local elections and for issue advocacy, collectively known as "soft money". The U.S. District Court for the District of Columbia held that 2 U.S.C. § 441e applied only to federal campaigns and not to state or local campaigns. The Court explained its decision as follows:

> The Federal Election Campaign Act ("FECA"), 2 U.S.C. §§ 431 et seq., provides a detailed set of limits governing contributions to electoral campaigns and expenditures by candidates. Of specific relevance to this case, FECA provides that "[n]o person shall make contributions" that exceed certain limits set forth in the statute. 2 U.S.C. § 441a. The statute also prohibits "foreign nationals" from making contributions, 2 U.S.C. § 441e, and prohibits any person from making contributions in the name of another or knowingly permitting his name to be used to effect such a contribution, 2 U.S.C. § 441f. The statute charges the [FEC] with the administration and enforcement of FECA. 2 U.S.C. § 437c...
>
> A "contribution" is defined by statute, in relevant part, as "money or anything of value made by any person for the purpose of influencing any election for **federal office**," see 2 U.S.C. § 431(8)(A)(emphasis added), **and the contribution limits set forth in FECA undisputably apply to contributions made to candidates for federal office, otherwise known as "hard money" contributions. The government does not dispute that FECA does not generally cover contributions for state or local campaigns and non-campaign activities such as issue advocacy, otherwise known as "soft money" contributions.**

21 F.Supp.2d at 12-13. Emphasis added.

In the subsequent U.S. v. Trie, 23 F.Supp.2d 55, the Court further explained its holding that 2 U.S.C. § 441e does not apply to state and local campaigns as follows:

> **[The government] contends, however, that FECA's prohibition of contributions by foreign nationals under 2 U.S.C. § 441e applies to soft money donations as well as hard money contributions. Govt's Opp. at 17-18. The Court disagrees.** With one exception, 2 U.S.C. § 441b, which has its own

separate definition of the term "contribution," **the word "contribution" has been defined by Congress in FECA as "money or anything of value made by any person for the purpose of influencing any election for federal office." 2 U.S.C. § 431(8)(A) (emphasis added). That is the definition (with the one exception already noted) that governs throughout the statute. Because 2 U.S.C. § 441e specifically prohibits only contributions by foreign nationals, the statute on its face therefore does not proscribe soft money donations by foreign nationals or by anyone else...**

The government argues that because Section 441e uses the phrase "an election to any political office" (emphasis added), Congress necessarily intended for Section 441e to apply to soft money donations. Govt's Opp. at 18. In making this argument, the government omits the essential language that describes the conduct that the statute prohibits: making a "contribution of money or other thing of value in connection with an election to any political office." **The word contribution is a term of art defined by the statute, and the statutory definition applies only to elections for federal office, see 2 U.S.C. § 431 (8)(A); it therefore does not encompass soft money donations.** If Congress had intended Section 441e or any other provision of FECA to apply to soft money, it either could have provided an alternative definition of the term "contribution" for Section 441e, as it did for Section 441b, or it could have used the word "donation" rather than "contribution," as the regulations promulgated by the FEC do when referring to "non-federal" or "soft money" accounts. See, e.g. 2 U.S.C. § 441b (providing separate definition of contribution for purpose of that section) 11 C.F.R. § 104.8e ("National party committees shall disclose in a memo Schedule A information about each individual, committee, corporation, labor organization, or other entity that donates an aggregate amount in excess of $200 in a calendar year to the committee's non-federal account(s)")(emphasis added). Congress did neither in Section 441e.

In the face of clear statutory language and in the absence of any indication in the statute or legislative history that Congress intended Section 441e to apply to soft money donations, the Court concludes that Section 441e applies only to hard money [money for federal campaigns] "contributions." Indeed, it could not be more apparent that, with the exception of Section 441b, Congress intended the proscriptions of the Federal Election Campaign Act to apply only to "hard money" contributions.

23 F.Supp.2d at 59-60. Emphasis added.

The Court in U.S. v. Trie also found it noteworthy that the 105th Congress also believed that Section 441e does not apply to state and local campaigns and issue advocacy, or "soft money." In a footnote to its decision, the Court stated as follows:

> It is worth noting that the Bipartisan Campaign Reform Act of 1998, a bill introduced in the House of Representatives on March 19, 1998, to amend the Federal Election Campaign Act, contains a section entitled "Strengthening Foreign Money Ban" that would amend Section 441e to specifically prohibit foreign nationals from making "a donation of money or other thing of value." Bipartisan Campaign Reform Act of 1998, H.R. 3526, 105th Cong. § 506 (1998) (emphasis added).
>
> **The proposed amendment suggests that the House of Representatives does not believe that Section 441e as currently drafted prohibits foreign nationals from making donations of soft money.** While the "views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one," South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, ---, 118 S.Ct. 789, 803, 139 L.Ed.2d 773 (1998), quoting United States v. Philadelphia National Bank, 374 U.S. 321, 348-349, 83 S.Ct. 1715, 10 L.Ed.2d 915 (1963), **the proposed amendment to Section 441e further undermines the government's argument.** Cf. Loving v. United States, 517 U.S. 748, 770, 116 S.Ct. 1737, 135 L.Ed.2d 36 (1996) (**"subsequent legislation declaring the intent of an earlier statute is entitled to great weight in statutory construction"**) (internal quotations omitted); Beverly Community Hospital Assn. v. Belshe, 132 F.3d 1259, 1265 (9th Cir.1997) (same).

23 F.Supp.2d at 60. Emphasis added. Where "the text of the statute is clear, we must give effect to the unambiguously expressed intent of Congress." Simon v. FEC, 53 F.3d 356 (D.C. Cir. 1995).

In the more recent decision of U.S. v. Kanchanalak, 1999 WL 55169 (D.D.C.)(1999), the District Court of the District of Columbia ruled again that FECA "applies only to hard money contributions." 1999 WL 55169 at page 6. *See also* Mendelsohn v. Meese, 695 F.Supp 1474, 1482 ("Buckley was a comprehensive challenge to the 1974 amendments to the Federal Election Campaign Act, which placed significant limitations on the contribution and expenditure of funds in **federal election campaigns**,"); Orloski v. Federal Election Commission, 795 F.2d 156, 162-163 (U.S. App. D.C. 1986) ("the purposes of [FECA] are to limit spending in **federal election campaigns**..."); Federal Election Commission v. Akins, 524 U.S. 11, 118 S.Ct.1777, 1781, 141 L.Ed. 10 (1998) (where the Supreme Court stated that the FECA "defines the key terms

"contribution" and "expenditure" as covering only those contributions and expenditures that are made "**for the purpose of influencing any election for Federal office**,")(emphasis added).

Based upon case law precedents, the FEC lacks the jurisdiction to pursue this matter. As in U.S. v. Trie, the FEC General Counsel argues that there may be a violation of 2 U.S.C. § 441e by Fasi Respondents. Since it is undisputed that Mr. Fasi has never campaigned for federal office during the time period of the Cultural Plaza lease, there cannot be a violation of Section 441e and this matter should be closed, **as a matter of law**. Furthermore, in pursuing this intrastate matter, the FEC encroaches upon the State of Hawaii's sovereign right to control its own state and local elections as set out in the Hawaii State Constitution, Article II, Section 6, which provides:

> Limitations on campaign contributions to any political candidate, or authorized political campaign organization for such candidate, for any elective office within the state shall be provided by law.

The State of Hawaii has also created a Campaign Spending Commission under Hawaii Revised Statutes Chapter 11 to investigate all matters related to state and local campaigns. This Hawaii Campaign Spending Commission has already had occasions to enforce a ban on foreign contributions in Hawaii's state and local campaigns and has ordered the return of said foreign contributions. If one were to accept the FEC General Counsel's argument, then arguably every FEC rule can be imposed upon the states. The FEC General Counsel's argument is simply untenable.

B. As a Matter of Law, the Statute of Limitations Bars this Claim.

In its Brief, the FEC General Counsel alleges that "Fasi's reduced rental payment over a span of twelve years qualifies as a 'contribution in connection with an election.'" *See* FEC General Counsel's Brief at page 15. The FEC General Counsel argues that Fasi Respondents

accepted in-kind contributions from 1984 to 1996 based upon the oral lease Mr. Fasi entered into in 1984. *See* FEC General Counsel's Brief at page 4. By its own admission and on the face of the Brief, therefore, the FEC General Counsel states that this instant claim against Fasi Respondents began, or accrued, in 1984. As the FEC has already admitted in other cases, the statute of limitations for any action brought by the FEC for civil penalties is set forth in 28 U.S.C. Section 2462, which is as follows:

> Except as otherwise provided by Act of Congress, an action, suit or proceeding for enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced **within five years from the date when the claim first accrued** if, within the same period, the offender or the property is found within the United States in order that proper service may be found thereon.

Emphasis added. And as set forth in FEC v. Williams, 104 F.3d 237 (9th Cir. 1996), pet. for reh'g and suggestion for reh'g en banc filed on other grounds, No. 95-55320 (Feb. 5, 1997), 118 S.Ct. 600 (Mem), 139 L.Ed.2d 488, 66 USLW 3297, 66 USLW 3396, 66 USLW 3398, **the claim accrues at the time the alleged offense is committed.** In this case, according to the FEC General Counsel, the claim accrued in 1984. *See also* FEC v. Christian Coalition, 965 F.Supp. 66, 70 ("[i]n sum, the law of this Circuit is clear and the facts, as pled by the FEC, control: **the FEC's cause of action accrued when the events at issue occurred**, and 28 U.S.C. § 2462 operates according to its terms to bar the enforcement of any civil fine, penalty or forfeiture for events that occurred more than five years before the Complaint was filed,")(emphasis added); FEC v. National Republican Senatorial Committee, 877 F.Supp. 15 (D.D.C.1995); FEC v. National Right to Work Committee, Inc., 916 F.Supp. 10 (D.D.C.1996).

The FEC General Counsel, in a footnote, concedes that the statute of limitations "appears to bar obtaining civil penalties for violations that are more than five years old." *See* FEC General Counsel's Brief at page 6, citing the Williams case. In the same footnote, the FEC General

Counsel also argues that the FEC "may be able to obtain injunctive and/or declarative relief for violations in this matter that occurred prior to the past five years." The Ninth Circuit Court (which sets the controlling precedent for this matter) in Williams, however, disagreed with the FEC General Counsel's opinion as follows:

> FEC argues that § 2462 does not apply to actions for injunctive relief. This assertion runs directly contrary to the Supreme Court's holding in Cope v. Anderson, 331 U.S. 461, 464, 67 S.Ct. 1340, 1341, 91 L.Ed. 1602 (1947). Cope holds that "equity will withhold its relief in such a case where the applicable statute of limitations would bar the concurrent legal remedy." **In other words, because the claim for injunctive relief is connected to the claim for legal relief, the statute of limitations applies to both.**

104 F.3d at 240. Emphasis added. See also Air Transport v. Lenkin, 711 F.Supp. 25, 27-28 (D.D.C.1989), aff'd 899 F.2d 1265 (D.C. Cir. 1990) (a separate cause of action is not caused by each monthly rent check and it begins when the claim first accrued.)

C. The Factual Grounds Which This Claim Is Based Are Either Incorrect And/or Based on Unsubstantiated Hearsay

A violation of Section 441e only requires a foreign contribution to a federal campaign. The FEC General Counsel argues unpersuasively that Section 441e applies to state and local campaigns as well as federal campaigns. Whether the FEC General Counsel actually believes its own argument given the well-established case law and precedents against it, is open to question. In any event, the FEC General Counsel, even under its own incorrect interpretation of Section 441e (with which Fasi Respondents do not agree), need only show that a foreign contribution was made to the Fasi campaign. It is extremely troubling, therefore, that the FEC General Counsel's Brief goes out of its way to invent facts in an attempt to establish a *quid pro quo* and include allegations in its Brief that are neither supported nor, in many cases, factually correct. Some of the incorrect statements and allegations included in the FEC General Counsel's Brief

are so prejudicial and inflammatory that together they appear to amount to a deliberate and coordinated attempt to mislead and misinform the FEC Commissioners. Fasi Respondents strenuously object to this unethical conduct, conduct which could only be intended to inflame the emotions of the FEC Commissioners in this matter to rule against Fasi Respondents.

The first attempt to mislead by the FEC General Counsel's Brief is related to the allegations of an unnamed witness. Fasi Respondents object to the hearsay "evidence" of an alleged telephone interview with an unnamed "former employee of Longevity and manager at the Cultural Plaza." *See* FEC General Counsel's Brief at page 9. Although the FEC General Counsel's Brief does not disclose the name of the witness, Fasi Respondents have learned that the witness was almost certainly one Louis Chang, the former Operations Manager of Longevity from 1981 to 1995. The FEC General Counsel's Brief alleged as follows:

> Most significantly, the witness stated that he believed...Longevity thought that a reduced rent for Fasi would produce advantages from Fasi as the Mayor. The witness also stated that after Fasi moved into the Cultural Plaza, the Cultural Plaza was placed on a city bus route, received a bus stop, and police patrols in the area increased. In sum, he asserted that Fasi being mayor at the time influenced the amount that Fasi paid for rent at the Cultural Plaza.

See FEC General Counsel's Brief at pages 4-5.

The statements allegedly made by the witness are absurd, unsupported by credible evidence, completely without merit, and are hereby expressly denied by Fasi Respondents as to there being any *quid pro quo* in exchange for an alleged reduced rent to Mr. Fasi. First, the Cultural Plaza is located on Beretania Street, a one-way street, on the outskirts of downtown Honolulu. Beretania Street is one of the main thoroughfares into, and out of, downtown Honolulu, and has had a bus route long before Mr. Fasi and Longevity entered into a lease at the Cultural Plaza. Second, the placement of bus stops and routes is controlled by the Oahu Transit

Services, Inc., a semi-autonomous department and the Transportation Department of the City. Final approval of both bus stops and routes rests with the City Council. If the City Council does not approve of said routes and stops, there is nothing that the Mayor can do. Third, any increase or decrease in police patrols in the Chinatown area is determined by the Chief of Police, who is appointed by the Honolulu Police Commission, not by the Mayor. As with the bus route and bus stop allegations, there is no evidence presented whatsoever that Mr. Fasi had any involvement in these decisions regarding police patrols. While Fasi Respondents have no specific knowledge that police patrols were, in fact, increased in the Chinatown area during the period from 1981 to 1996, it should be noted that: 1) Chinatown is one of the highest crime areas in the State of Hawaii; 2) the size of the overall police force has grown considerably since 1981; and, 3) the immediate surrounding Chinatown area has seen a marked rise in residents in the community as thousands of residential condominium and elderly housing units have been developed since 1981. In other words, given the above-enumerated factors, it would be reasonable to assume that there may have been increased police patrols in the surrounding community from 1981 to 1996. Mr. Fasi denies, however, that Mr. Fasi personally demanded increased police patrols specifically for the Cultural Plaza in exchange for an alleged reduced rent. **Fourth, and most important, Fasi Respondents have learned that the unnamed witness who is suspected of allegedly making the *quid pro quo* statements, Mr. Chang, has submitted a sworn and signed affidavit to the FEC denying that he made the statements attributed to him in the FEC General Counsel's Brief.** The FEC has to date purposely withheld this document from Fasi Respondents. It is not even mentioned in the FEC General Counsel's Brief. This withholding of this extremely relevant and exculpatory affidavit is unethical and unfair to Fasi Respondents. If an FEC Commissioner were to read the FEC General Counsel's Brief and if

Fasi Respondents had not learned from third parties that Mr. Chang had sent his affidavit, the Commissioner would be voting blindly as to the truth about the most damaging allegations contained in the FEC General Counsel's Brief. In the sworn affidavit, a copy of which is attached hereto as Exhibit 1, Mr. Chang states as follows:

> 10. With respect to general tenants at the Cultural Plaza, I was responsible for negotiating the rent. However, with regard to Frank Fasi's tenancy at the Cultural Plaza, he made a direct proposal to Longevity's board of directors for a special monthly rent based upon, 1) a month-to-month tenancy and, 2) the fact that the rented space was located in a building at the Cultural Plaza (Building #3) which was sinking due to construction defects. **In addition, the overall occupancy rate at the Cultural Plaza was very low at that time. As a result, it was determined by the Board of Directors that it was better to have a tenant paying some rent rather than the space remaining vacant.**
>
> 11. At the time Frank Fasi became a tenant of the Cultural Plaza, it was my personal belief that his tenancy would be beneficial to Longevity and the Cultural Plaza. **However, things such as placing the Cultural Plaza on a bus route, installing a bus stop and increasing police patrols in the area were never, to my knowledge, a part of Fasi's rent negotiations, and, in my personal opinion, occurred simply because of the growing needs of the community around the Cultural Plaza, not Fasi.**

See Exhibit A, attached hereto. Emphasis added.

A signed and sworn affidavit should be given much more weight than a hearsay statement allegedly from the same witness. It is indefensible that Mr. Chang's affidavit was not disclosed to Fasi Respondents nor even mentioned in the FEC General Counsel's Brief. The affidavit didn't even merit a footnote, which seem to be where all the most damaging facts are placed in the FEC General Counsel's Brief in a futile attempt to trivialize and minimize the most important aspects of this matter.

The FEC General Counsel's Brief states that Mr. Fasi entered into the reduced month-to-month arrangement on March 1, 1984, "the first year he was elected Mayor of Honolulu, until he vacated the premises in November 1996 immediately after losing the 1996 mayoral primary and

soon after being notified...that Fasi's rent schedule would be adjusted" (at page 5). The intended effect is to give the nefarious impression that Mr. Fasi received the reduced rent only because he was the Mayor in 1984 and that it was taken away after he was defeated in 1996 since he could no longer offer Longevity anything in return (as the FEC General Counsel's Brief states on page 5, "[i]ndeed, Fasi vacated the office space approximately a week after suffering his second electoral defeat, a 1996 primary bid for Mayor of Honolulu"). The truth is that Mr. Fasi was not elected Mayor until November 1984, over eight full months after entering the month-to-month lease with Longevity. Furthermore, Mr. Fasi resigned as Mayor in July 1994. From July 1994 then, Mr. Fasi did offer Longevity any benefits from being an elected official. Therefore, Mr. Fasi entered into the lease as a private citizen and terminated the lease as a private citizen. Any impression that the lease was entered into and terminated based upon Mr. Fasi being the Mayor and the benefits that said position might be useful to Longevity is simply incorrect.

In the same vain, the FEC General Counsel's methodology and supporting facts to make the argument that Mr. Fasi's rent was at a reduced level are also incorrect and/or faulty. For example, Fasi Respondents began paying an increased base rent of $3,500.00 in 1996, but this was not reflected in the FEC General Counsel's calculations. *See* Attachment 1 to the FEC General Counsel's Brief. The increased rent was paid by Fasi Respondents with the understanding that a written lease would be entered into to replace Longevity's right to terminate the month-to-month lease at anytime. Such written lease was never executed as the lease terms could not be agreed upon. Also, there is no evidence presented in the FEC General Counsel's brief that it is qualified to opine about rental prices in Hawaii. No discount is included in the FEC General Counsel's Brief to account for the fact that the Fasi lease was a month-to-month agreement whereby Fasi Respondents could be forced to vacate at anytime. Furthermore, Fasi

Respondents have learned that China Airlines, in MUR 4594 - China Airlines, Ltd., has submitted to the FEC a signed and sworn affidavit of Hawaii real estate expert, Robert Hastings, a certified expert appraiser, on February 14, 1997, in response to an FEC complaint filed against China Airlines for this same underlying rent issue with Fasi. Fasi hereby adopts and incorporates Mr. Hastings affidavit by reference which affidavit states that the approximate market range for the Fasi leased space from 1992 to 1996 would be $0.25 per square foot to $0.75 per square foot per month. It is undisputed that Fasi's rent at the Cultural Plaza, based on the FEC General Counsel's own calculations in attachment 1 of the FEC General Counsel's Brief, was either slightly below the low end or within the range during the period 1994 to 1996.

Finally, the FEC General Counsel names Mr. Fasi and William Rose, personally, in this matter. Mr. Rose did not become the treasurer of Friends For Fasi until 1998, and, therefore, should be dismissed as a party from this matter. As for Mr. Fasi, the FEC General Counsel states that Mr. Fasi is deemed to have accepted the contributions based on his interrogatory response that "[i]t is believed that the Cultural Plaza is *owned by an American-based corporation with Taiwanese ownership, Longevity International,* but that it is *managed by .....since 1994, Taiwanese officials.*" *See* FEC General Counsel's Brief at page 15. The interrogatory response was submitted in 1998 in response to the interrogatory to "[i]dentify the owners of the Cultural Plaza." Mr. Fasi's complete answer was as follows:

> Unknown. It is believed that the Cultural Plaza is owned by an American-based corporation with Taiwanese ownership, Longevity International, but that it is managed by a group of local Hawaii businessmen and, since 1994, Taiwanese officials.

See Interrogatory response filed with the FEC. The FEC General Counsel has no evidence of when Mr. Fasi formed his belief as stated in 1998, nor whether he believed the local Hawaii

businessmen made the decisions as indicated by the portion of his answer that the FEC General Counsel's Brief conveniently omitted. Second, the FEC General Counsel states that since "Mr. Fasi involved himself personally in rental negotiations with Cultural Plaza management and members of Longevity's board of directors for Friends For Fasi's office space and signed Friends For Fasi disclosure reports, he accepted the contributions...". See FEC General Counsel's Brief at page 15. While it is true that Mr. Fasi negotiated the rent in 1984 on a month-to-month basis, the fact is that the rent in 1984 was reasonable when compared to the FEC General Counsel's Brief calculations of the rent paid by First Hawaiian Properties, Inc. of a similar sized space (3,610 sf.) of $0.30 per square foot in 1985. It should be noted that the FEC General Counsel has not included any evidence in the form of comparable rents at the Cultural Plaza for the actual year the Fasi lease was entered into in 1984. There is, therefore, no evidence whatsoever that the lease rent which Mr. Fasi personally negotiated in 1984 was not reasonable at that time. Similarly, the FEC General Counsel has not attached any disclosure reports signed by Mr. Fasi that indicate that he should have known that the lease rents paid by Fasi were unreasonably low and amounted to a contribution by Longevity, as argued in the FEC General Counsel's Brief. Accordingly, Frank Fasi should also be dismissed as a named respondent to MUR 4594.

III. CONCLUSION

For the foregoing reasons, Fasi respectfully requests that the FEC dismiss this matter and

take no further action in regard to Fasi.

DATED: Honolulu, Hawaii, _____.

David F. Fasi

DAVID F. FASI

Attorney for Respondent
Friends For Fasi, and William Rose, as
Treasurer, and Frank Fasi