




FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: The Commissioners
Staff Director
Deputy Staff Director
General Counsel

FROM: Office of the Commission Secretary 

DATE: November 13, 2000

SUBJECT: Statement of Reasons for MUR 4742

Attached is a copy of the Statement of Reasons for MUR 4742 signed by Vice-Chairman Danny L. McDonald, Commissioner David M. Mason, Commissioner Karl J. Sandstrom, Commissioner Bradley A. Smith, and Commissioner Scott E. Thomas. This was received in the Commission Secretary's Office on Thursday, November 9, 2000 at 4:03 p.m.

cc: Vincent J. Convery, Jr.
Press Office
Public Information
Public Disclosure

Attachment

21-04-403-1934



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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In the Matter of)

Juan Vargas)

Juan Vargas for Congress '96 and)

Deanna Liebergot as treasurer)

The Primacy Group and Larry Remer, Owner)

MUR 4742

STATEMENT OF REASONS

On September 26, 2000, the Commission voted to reject the General Counsel's recommendation to find probable cause to believe the Primacy Group and Larry Remer, owner, violated 2 U.S.C. § 441a. The Commission also voted to reject the General Counsel's recommendation to find probable cause to believe Juan Vargas, Vargas for Congress '96 and Deanna Liebergot, as treasurer ("the Committee"), violated 2 U.S.C. § 441a(f). Instead, the Commission voted unanimously to take no further action with respect to these respondents, and to close the file.

This matter was generated by a complaint filed by Derrick Roach, treasurer for the David Gomez for San Diego City Council Campaign Committee, against Mr. Gomez' opponent in the 1998 San Diego City Council race, City Council member Juan Vargas. Mr. Vargas was an unsuccessful candidate in the Democratic primary for the United States House of Representatives in 1996. The complaint involved, *inter alia*, the business relationship between Mr. Vargas' authorized committee for the 1996 Federal race, Vargas for Congress '96 (and its treasurer, Deanna Liebergot) and its primary vendor, the Primacy Group. Apparently an unincorporated sole proprietorship, the Primacy Group is a political consulting firm.¹

At issue in the matter was whether the Primacy Group had extended to the Committee, outside of the ordinary course of business, a consulting contract that had deferred the payment of a portion of the Primacy Group's retainer until the end of the campaign. In addition, a \$24,506.07 debt to the Primacy Group incurred by Mr. Vargas and the Committee pursuant to that contract remained unpaid from March 1996 until August 1999.

¹ Attachment 1 of the November 19, 1999, General Counsel's Report makes reference to "The Primacy Consulting Group, Inc., 3609 Fourth Avenue, San Diego, CA." (emphasis added). The information before the Commission at the time of its decision, however, suggested Primacy was not incorporated. The Office of General Counsel investigated whether Primacy was incorporated and stated: "[A] check of public records by this office revealed that Primacy is not incorporated." April 12, 1999, General Counsel's Report at 10-11 n.10. See also *id.*, at n.11 ("the Primacy Group is not incorporated in California").

21-04-403-1935

Under the statute, no person shall make a contribution to a candidate and his authorized political committee with respect to any election for federal office which, in the aggregate, exceeds \$1,000. 2 U.S.C. § 441a(a)(1)(A). The law further prohibits any candidate or political committee from knowingly accepting any contribution which exceeds the section 441a(a)(1)(A) limits. 2 U.S.C. § 441a(f). The term "contribution" includes any gift, subscription, loan, advance, or deposit of 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)(i).

Under the Commission's regulations, the extension of credit by any person to a candidate's authorized political committee is also a contribution, unless the credit is extended in the ordinary course of business. 11 C.F.R. § 100.7(a)(4). The terms of any credit extended must be substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. 11 C.F.R. § 116.3(a). In determining whether credit was extended by an unincorporated vendor in the ordinary course of business, the Commission will examine the vendor's established procedures and past practice in approving credit, the usual and normal practice in the vendor's industry, and whether the vendor received prompt payments in the past from the candidate and the candidate's authorized committee. See 11 C.F.R. § 116.3(c). In addition, a commercial vendor must pursue collection of a debt in a commercially reasonable manner; otherwise, a contribution will result.

The Commission concluded that the available information did not warrant probable cause to believe findings and civil penalties with respect to the relevant sections of the Act and the Commission's regulations. There is some evidence that the activity at issue here may have been in the ordinary course of business and consistent with standard industry practice, and the resulting legal question presented a close call. At most, respondents' activity constituted a technical violation. As a mitigating factor, the Commission recognized that Mr. Remer, the owner of the Primacy Group, could have structured this activity differently and volunteered his uncompensated services to the committee without any contribution resulting to the committee. See 2 U.S.C. § 431(8)(B)(i) ("The term 'contribution' does not include . . . the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee."). Alternatively, Primacy Group, as an unincorporated vendor,² probably could have forgiven the amount owed under 11 C.F.R. § 116.4(a)³

² See n.1.

³ Section 116.4(a) provides:

A commercial vendor that is not a corporation may forgive or settle a debt incurred by a candidate, a political committee or another person on behalf of a candidate or political committee for less than the entire amount owed on the debt. The amount forgiven will not be considered a contribution by the commercial vendor to the candidate or political committee if—

- (1) *The amount forgiven is exempted from the definition of contribution in 11 C.F.R. § 100.7(b) [see, in particular, volunteer exemption at § 100.7(b)(3)]; or*
- (2) *The commercial vendor has treated the debt in a commercially reasonable manner and the requirements of 11 C.F.R. § 116.7 or 116.8, as appropriate, are satisfied.* (emphasis added).

In addition, the fact that the debt in question had been paid back in full, *see* November 3, 1999 letter from respondents at 3, was a significant factor that mitigated against any further action. Accordingly, in the proper ordering of its priorities and resources, *see Heckler v. Chaney*, 470 U.S. 821 (1985), the Commission rejected recommendations to find probable cause to believe that violations under the Act and the regulations occurred and determined to take no further action with respect to those violations.

11-8-00
Date

Danny L. McDonald
Danny L. McDonald
Vice-Chairman *by F&J*

11 | 8/00
Date

David M. Mason
David M. Mason
Commissioner

11-8-2000
Date

Karl J. Sandstrom
Karl J. Sandstrom
Commissioner

11/8/00
Date

Bradley A. Smith
Bradley A. Smith
Commissioner

11/8/00
Date

Scott E. Thomas
Scott E. Thomas
Commissioner