


V. Convery



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: March 28, 2001

SUBJECT: Supplemental Statement of Reasons for MUR 4742

Attached is a copy of the Supplemental Statement of Reasons for MUR 4742 signed by Chairman Danny L. McDonald, Vice Chairman 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 Tuesday, March 27, 2001 at 4:21 p.m.

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

Attachment

21-04-403-1963



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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

SUPPLEMENTAL STATEMENT OF REASONS

We write this Supplemental Statement of Reasons to discuss certain information recently received by the Office of General Counsel. On November 8, 2000, we issued our original Statement of Reasons in this matter. At that time, we indicated our reasons for rejecting the General Counsel's recommendations to find probable cause to believe: (1) the Primacy Group and Larry Remer, owner, violated 2 U.S.C. § 441a; and (2) Juan Vargas, Vargas for Congress '96 and Deanna Liebergot, as treasurer ("the Committee"), violated 2 U.S.C. § 441a(f). In our consideration of this matter, we had relied upon the General Counsel's representation that "the Primacy Group is not incorporated in California." April 12, 1999, General Counsel's report at 11, n.10.

It now appears, however, that the Primacy Group was an incorporated entity. A recent General Counsel's Report states "the functions of the Primacy Group should be considered to be those of a corporation." February 23, 2001 General Counsel's Report at 4. Despite this change in corporate status, the General Counsel's Report finds that the underlying legal analysis in this matter remains essentially the same:

As a result of this new information, it appears that the probable cause recommendations regarding the extension of credit and the failure to timely collect debts should have been styled as improper section 441b violations, not as excessive 441a violations. *However, this office would have presented essentially the same analysis with respect to either violation.*

Id. (emphasis added).

Similarly, our reasons for rejecting the General Counsel's probable cause recommendations are much the same whether the violations are based upon 2 U.S.C. § 441a or 2 U.S.C. § 441b. As we explained in our original Statement of Reasons, there are three reasons

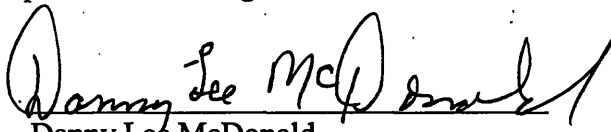
21-04-403-1964

for not proceeding forward in this matter. First, "[t]here 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." November 8, 2000 Statement of Reasons at 2. Second, the Commission recognized as a mitigating factor 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)." *Id.* Third, the Commission concluded that the fact "the debt in question had been paid back in full. . . was a significant factor that mitigated against any further actions," *id.* at 3, and that a "proper ordering of [the Commission's] priorities and resources, see *Heckler v. Chaney*, 470 U.S. 821 (1985)," indicated no further action was appropriate. These reasons remain as valid with respect to a § 441b analysis as they did with respect to § 441a.¹

Our rationale for rejecting the General Counsel's recommendations to find probable cause to believe that violations under the Act and the regulations occurred is essentially unchanged by the information regarding Primacy Group's corporate status. We continue to believe that it was appropriate to take no further action with respect to those alleged violations.²

3/27/01

Date

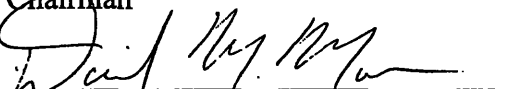


Danny Lee McDonald

Chairman

3/26/01

Date



David M. Mason

Vice Chairman

3-21-01

Date



Karl J. Sandstrom

Commissioner

3/27/01

Date

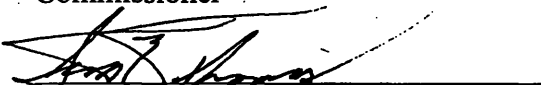


Bradley A. Smith

Commissioner

3/20/01

Date



Scott E. Thomas

Commissioner

¹ In our original Statement, we also noted that "[a]lternatively, Primacy Group, as an incorporated vendor, probably could have forgiven the amount owed under 11 C.F.R. § 116.4(a)." November 8, 2000, Statement of Reasons at 2 (footnotes omitted)(emphasis added). Obviously, this "alternative" rationale based upon the unincorporated status of the Primacy Group is no longer effective. This does not change, however, our decision to reject the General Counsel's probable cause to believe recommendations.

² The Commission did pursue the Committee for its failure to timely report debt owed to Primacy in violation of 2 U.S.C. § 434(b). In a conciliation agreement reached with the Commission on March 9, 2001, the Committee agreed to amend all reports currently on file with the Commission to accurately reflect debt owed to Primacy and to pay a civil penalty to the Commission in the amount of \$1100.