




FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20461

**SENSITIVE**

MEMORANDUM

TO: Commissioners  
Staff Director Pehrkon  
General Counsel Noble

FROM: Marjorie W. Emmons/Lisa R. Davis 

DATE: May 10, 1999

SUBJECT: Statement of Reasons for MUR 4759.

Attached is a copy of the Statement of Reasons in MUR 4759 signed by  
Chairman Scott E. Thomas, Vice-Chairman Darryl R. Wold, Commissioner  
Lee Ann Elliott, Commissioner David M. Mason, Commissioner  
Danny L. McDonald, and Commissioner Karl J. Sandstrom. This was received  
in the Commission Secretary's Office on Friday, May 7, 1999 at 3:26 p.m.

cc: V. Convery

Attachment



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

**SENSITIVE**

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Friends of Phil Maloof and  
Dolores Gonzales, as treasurer ("the Committee")

MUR 4759

**STATEMENT OF REASONS**

**Chairman Scott E. Thomas**  
**Vice-Chairman Darryl R. Wold**  
**Commissioner Lee Ann Elliott**  
**Commissioner David M. Mason**  
**Commissioner Danny L. McDonald**  
**Commissioner Karl J. Sandstrom**

On March 23, 1999, the Commission voted to reject the General Counsel's recommendation to find reason to believe that Friends of Phil Maloof and Dolores Gonzalez, as treasurer ("the Committee"), violated 2 U.S.C. §434(a)(2)(B)(ii).<sup>1</sup> At issue was whether Mr. Maloof had become a candidate within the meaning of 2 U.S.C. §431(2) and thus was required to file a report with the Commission by January 31, 1998, disclosing the Committee's financial activity from July 1 to December 31, 1997.

<sup>1</sup> Based on the General Counsel's recommendation, the Commission voted 6-0 to find reason to believe the Committee violated 2 U.S.C. §441d(a), and that Phillip J. Maloof violated 2 U.S.C. §432(e)(1). The Commission found no reason to believe that the Committee violated 2 U.S.C. §433(b)(2).

## I. The Law

Disbursements made solely for the purpose of determining whether an individual should become a candidate are not "expenditures" within the meaning of the Federal Election Campaign Act ("the Act").<sup>2</sup> These "testing the waters" activities include, but are not limited to, payments for polling, telephone calls, and travel.<sup>3</sup>

An individual becomes a candidate for federal office - and thus triggers registration and reporting under the Act - when campaign activity exceeds \$5,000 in either contributions or expenditures.<sup>4</sup> However, money raised and spent solely to "test the waters" does not count towards this dollar threshold until the individual decides to run for federal office or conducts activities that indicate he or she has decided to become a candidate.<sup>5</sup>

Activities indicating an individual has decided to become a candidate and gone beyond "testing the waters" include: the use of general public political advertising to publicize an intention to run for office; raising funds in excess of what could reasonably be expected to be used for exploratory activities; activities designed to amass campaign funds that would be spent after the individual becomes a candidate; or making statements referring to him or herself as a candidate.<sup>6</sup>

## II. Mr. Maloof's Activities

Though Mr. Maloof announced his intention to run for office on January 13, 1998, the General Counsel reasoned that it is "difficult to believe" that Mr. Maloof was not a candidate by December 6, 1997,<sup>7</sup> and was therefore required to register and report prior to his first filing of February 11, 1998.<sup>8</sup> The Commission rejected this assessment based on the language of the regulations and the actions of Mr. Maloof.

According to disclosure reports, the Committee spent approximately \$35,000 between September 2, 1997 and December 29, 1997. The bulk of the disbursements paid for consulting (\$9,915 on September 2, 1997 and \$3,830 on November 24, 1997) and for a survey (\$20,616 on November 24, 1997).<sup>9</sup>

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<sup>2</sup> 11 C.F.R. §100.8(b)(1)(i).

<sup>3</sup> *Id.*

<sup>4</sup> 2 U.S.C. §431(2)(A).

<sup>5</sup> 11 C.F.R. §100.8(b)(1)(i) and (ii).

<sup>6</sup> §100.8(b)(1)(ii).

<sup>7</sup> First General Counsel's Report, MUR 4759 at 11.

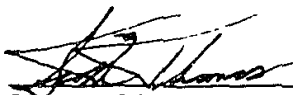
<sup>8</sup> 2 U.S.C. §432(e)(1) and §434(a)(2)(B); On February 11, 1998, Friends of Phil Maloof filed a Statement of Candidacy with the FEC. Maloof filed his first disclosure report (April 1998 Quarterly) on April 19, 1998. *FEC candidate database*, April 13, 1999.

<sup>9</sup> April 1998 Quarterly Report of Friends of Phil Maloof.


As noted above, surveys (or polls), are specifically contemplated by the regulations as permissible exploratory activity.<sup>10</sup> In addition, disbursements for consultants' fees, like the two made by Mr. Maloof, are common for individuals considering a run for federal office.

In addition to making permissible exploratory disbursements, Mr. Maloof did not undertake actions indicating he had become a candidate. He did not advertise an intent to run for Federal office, refer to himself as a candidate, or raise funds in excess of what could be expected to be used for exploratory activity.<sup>11</sup> In fact, the Committee did not receive its first contribution, other than from Mr. Maloof himself, until December 25, 1997.<sup>12</sup>

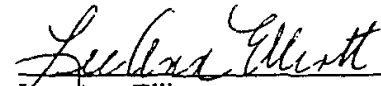
Using Commission regulations as the standard, Mr. Maloof could reasonably conclude his payments were for permissible exploratory activity. For these reasons, the Commission determined Mr. Maloof was not a candidate prior to December 6, 1997<sup>13</sup>, and the Committee was therefore not required to register and report until after January 31, 1998.

  
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Scott E. Thomas  
Chairman

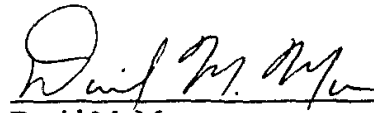
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Darryl R. Wold  
Vice-Chairman

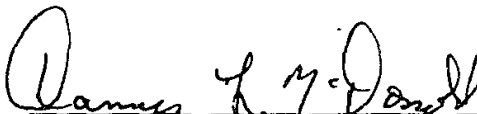
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Commissioner

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Karl J. Sandstrom  
Commissioner

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Date

<sup>10</sup> §100.8(b)(1)(i). Note: this subsection uses the word "poll," while Mr. Maloof's disclosure report used the word "survey."

<sup>11</sup> See §100.8(b)(1)(ii).

<sup>12</sup> April 1998 Quarterly Report of Friends of Phil Maloof. Mr. Maloof's committee received its first contribution on December 25, 1997, in the amount of \$1,000. Mr. Maloof made several contributions to his committee beginning in September of 1997.

<sup>13</sup> This date is predicated on the 15 days an individual has in which to designate in writing a political committee to serve as his principal campaign committee once he has become a candidate (2 U.S.C. §432 (e)(1)), and the 10 days following that 15 day period in which the committee has to file a statement of organization (2 U.S.C. §433(a)), for a total of 25 days. Therefore, an individual has a maximum of 25 days from the time he becomes a candidate before his authorized committee must begin filing disclosure reports pursuant to 2 U.S.C. §434(a). In this case, because Mr. Maloof was not a candidate prior to December 6, 1997, his committee was not required to file a disclosure report by January 31, 1998, that covered activity before December 31, 1997. 2 U.S.C. §434(a)(2)(B)(ii).