

AGENDA DOCUMENT #X99-45



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

STATE FILE
FEDERAL ELECTION
COMMISSION
SECRETARY

May 13 4 22 PM '99

May 13, 1999

Memorandum

To: The Commission

From: Lawrence M. Noble
General Counsel

By: Lois G. Lerner *sp*
Associate General Counsel

Re: Late Submission

This Office requests that the Commission suspend the rules in order to place the EPS Closing Report on the Executive Session Agenda for Tuesday, May 18, 1999 to allow for the most expeditious consideration by the Commission.

Attachment

SENSITIVE

MAY 18 1999

EXECUTIVE SESSION

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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CASE CLOSURES UNDER
ENFORCEMENT PRIORITY

GENERAL COUNSEL'S REPORT

I. INTRODUCTION.

The cases listed below have been identified as either stale or of low priority based upon evaluation under the Enforcement Priority System (EPS). This report is submitted to recommend that the Commission no longer pursue these cases.

II. CASES RECOMMENDED FOR CLOSURE.

A. **Cases Not Warranting Further Action Relative to Other Cases
Pending Before the Commission**

EPS was created to identify pending cases that, due to the length of their pendency in inactive status or the lower priority of the issues raised in the matters relative to others presently pending before the Commission, do not warrant further expenditure of resources. Central Enforcement Docket (CED) evaluates each incoming matter using Commission-approved criteria which results in a numerical rating for each case.

Closing

cases permits the Commission to focus its limited resources on more important cases presently pending before it. Based upon this review, we have identified 13 cases that do

not warrant further action relative to other pending matters.¹ The attachments to this report contain a factual summary of each case, the EPS rating, and the factors leading to assignment of a low priority and recommendation not to further pursue the matter.

B. Stale Cases

Effective enforcement relies upon the timely pursuit of complaints and referrals to ensure compliance with the law. Investigations concerning activity more remote in time usually require a greater commitment of resources, primarily due to the fact that the evidence of such activity becomes more difficult to develop as it ages. Focusing investigative efforts on more recent and more significant activity also has a more positive effect on the electoral process and the regulated community. In recognition of these facts, EPS also provides us with the means to identify those cases which

remain unassigned for a significant period due to a lack of staff resources for effective investigation. The utility of commencing an investigation declines as these cases age, until they reach a point when activation of a case would not be an efficient use of the Commission's resources.

¹ These cases are: MUR 4771 (*Jim Duncan For Congress*); MUR 4781 (*West Virginia "Machine"*); MUR 4786 (*Steve Horn For Congress*); MUR 4801 (*Reid For Senate*); MUR 4804 (*O'Connor Committee*); MUR 4805 (*Don Carroll*); MUR 4807 (*Texans For Rudy Izzard*); MUR 4815 (*LaFalce For Congress*); MUR 4827 (*National Republican Senatorial Committee*); MUR 4853 (*Pat Neal*); MUR 4857 (*Hickey For The House Committee*); MUR 4859 (*San Antonio Express News*); and MUR 4860 (*The Blair-Bedford Post*).

We have identified cases that have remained on the Central Enforcement Docket for a sufficient period of time to render them stale.³ We recommend that nine of these cases be closed

Three of the cases recommended for closure are part of the group of cases that have not been able to be activated due to a lack of resources to effectively pursue them in a timely fashion.⁵ Two of these cases were first recommended for closure in June 1998. Though two of these cases have been stale for over a year, they have continued to be held at the request of the Commission in the event additional resources became available. Given the current status of the Commission's Enforcement workload and proximity of the 2000 election cycle, it does not appear that these cases will be activated, absent specific Commission direction to do so. Accordingly, we now recommend that they be dismissed.

We recommend that the Commission exercise its prosecutorial discretion and close the cases listed below, effective May 19, 1999. Closing these cases as of this date will allow CED and the Legal Review Team the necessary time to prepare closing letters and case files for the public record.

³ The stale cases are: Pre-MUR 353 (*Michael Kojima*); MUR 4466 (*Zimmer for Congress*); MUR 4505 (*Torricelli for Senate*); MUR 4647 (*DCCC, Frost, & Tarrant Co.*); MUR 4690 (*Al Gore*); MUR 4711 (*Ben Franklin Reform Democratic Club*); MUR 4722 (*Bustamante For Congress*); MUR 4740 (*Americans For A Brighter Future*); and MUR 4743 (*Goodling For Congress*).

⁵ These three cases are: MUR 4466 (*Zimmer for Congress*); MUR 4505 (*Torricelli for Senate*); MUR 4647 (*DCCC, Frost, & Tarrant Co.*).

III. RECOMMENDATIONS.

A. Decline to open a MUR, close the file effective May 19, 1999, and approve the appropriate letters in Pre-MUR 353.

B. Take no action, close the file effective May 19, 1999, and approve the appropriate letters in the following matters:

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| 1. MUR 4466 | 8. MUR 4743 | 15. MUR 4807 |
| 2. MUR 4505 | 9. MUR 4771 | 16. MUR 4815 |
| 3. MUR 4647 | 10. MUR 4781 | 17. MUR 4827 |
| 4. MUR 4690 | 11. MUR 4786 | 18. MUR 4853 |
| 5. MUR 4711 | 12. MUR 4801 | 19. MUR 4857 |
| 6. MUR 4722 | 13. MUR 4804 | 20. MUR 4859 |
| 7. MUR 4740 | 14. MUR 4805 | 21. MUR 4860 |

5/13/99

Date

LM Noble (L92)

Lawrence M. Noble
General Counsel