FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 26, 1999

David E. Frulla, Esq.
Brand, Lowell & Ryan
923 Fifteenth Street, N.W.
Washington, D.C. 20005

RE: MUR 4814
Friends of Jim Maloney and
Patricia Draper, as treasurer

Dear Mr. Frulla:

On July 13, 1999, the Federal Election Commission found reason to believe that your clients violated 2 U.S.C. §§ 441a(f) and 434, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), in connection with various primary contributions. However, after considering the circumstances of this matter, the Commission also determined to take no further action concerning these violations.

On the same date, the Commission also found no reason to believe your clients violated 2 U.S.C. § 441a(f) in connection with the August 13, 1998 contribution from Barbara Kennelly for Congress. Accordingly, the Commission has closed its file in this matter. The Factual and Legal Analysis and First General Counsel's Report, which formed a basis for the Commission's findings, are attached for your information.

The Commission reminds your clients that a separate primary election limit is not available to candidates nominated by party convention and not otherwise opposed until the regularly scheduled general election. *See* 11 C.F.R. § 110.1(j)(4). The acceptance and receipt of primary contributions under the above circumstances is a violation of 2 U.S.C. § 441a(f). Your clients should take steps to ensure that this activity does not occur in the future.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact Jose M. Rodriguez, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Scott E. Thomas
Chairman

Enclosures
Factual and Legal Analysis
First General Counsel's Report

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Friends of Jim Maloney
Patricia Draper, Treasurer

MUR: 4814

I. GENERATION OF MATTER

This matter was generated based on a complaint filed on September 24, 1998, by Chris DePino, Chairman of the Connecticut Republican State Central Committee, alleging that Friends of Jim Maloney ("98 Maloney Committee" or "the Committee"), the 1998 principal campaign committee of James Maloney, who was the incumbent Democratic Representative from Connecticut's fifth congressional district, improperly accepted a total of $132,025.45 in contributions for a primary election that was not in fact held. Complainant further alleges that the 98 Maloney Committee accepted an excessive $1,000 contribution from Barbara Kennelly for Congress.

As will be explained more fully below, a review of the Commission's database and the 98 Maloney Committee's reports on file with the Commission has substantially confirmed the receipt by that committee of approximately $95,625.45 in contributions improperly reported for a primary election. However, these same reports disclose this committee's prompt action to correct the misreporting, and in the case of contributions specifically designated by the contributor, to obtain corrections of the improper designations. Moreover, the 98 Maloney Committee's timely corrective actions reduced to only $1,500 the excessive aggregate general election contributions received

by the committee. Accordingly, while finding that there is reason to believe the 98 Maloney Committee and its treasurer violated 2 U.S.C. §§ 441a(f) and 434 concerning certain of the primary contributions, the Commission has decided to take no further action in this matter. Similarly, because the 98 Maloney Committee refunded the excessive contributions received from Barbara Kennelly for Congress, the Commission found no reason to believe the committee and its treasurer violated 2 U.S.C. § 441a(f) with regard to this transaction.

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), restricts the amounts that may be contributed to a candidate's authorized political committee to a maximum of $1,000 from individuals, including other authorized candidate committees, and $5,000 from qualified multicandidate committees per election. 2 U.S.C. §§ 441a(a)(1)(A) and (2)(A); 11 C.F.R. § 110.1(b)(1) and 11 C.F.R. § 110.2(b)(1). No candidate or political committee may knowingly accept contributions in excess of the prescribed limits. 2 U.S.C. § 441a(f); 11 C.F.R. § 110.9(a). Primary elections, general elections, and party conventions with authority to nominate a candidate are viewed by the Act as separate elections for purposes of the contribution limits. 2 U.S.C. §§ 431(1)(A) and (B); 11 C.F.R. §§ 100.2(b), (c) and (e). Connecticut state law invests party conventions with the authority to nominate the party's congressional candidates, and thus the Commission has viewed these party conventions as elections for purposes of the contribution limits. *See* A.O. 1976-58. A primary election which is not held because a candidate was nominated by a caucus or convention

with authority to nominate is not a separate election for the purposes of the Act's limitations on contributions. 11 C.F.R. § 110.1(j)(4).

Contributors may designate a contribution for a specified election. 11 C.F.R. §§ 110.1(b)(2)(i) and (4); 11 C.F.R. §§ 110.2(b)(2)(i) and (4). Contributions which are not specifically designated for a particular election by the contributor must be applied by the recipient committee towards the next election for the federal office sought by the candidate. 11 C.F.R. § 110.1(b)(2)(ii) and 11 C.F.R. § 110.2(b)(2)(ii). A contribution designated for an election that has already been held may only be accepted to the extent it does not exceed the net debts outstanding from that election. 11 C.F.R. § 110.1(b)(3)(i) and 11 C.F.R. § 110.2(b)(3)(i). Candidate committees may assume the outstanding debt of previous authorized committees of the same candidate and accept contributions for the retirement of that outstanding debt. *See generally,* 11 C.F.R. § 116.2 (requiring authorized committees assuming debts from previous campaigns to report all contributions received for retirement of these debts in accordance with the Commission's debt reporting guidelines).

Either designated or undesignated contributions which result in the receipt of excessive contributions to an election must either be refunded or redesignated by the contributor for another election, subject to the Act's contribution limitations, within sixty days. 11 C.F.R. §§ 110.1(b)(3)(i) and (b)(5); 11 C.F.R. §§ 110.2(b)(3)(i) and (b)(5); 11 C.F.R. § 103.3(b)(3). All committee requests for redesignations must disclose that the contributor may instead seek a refund of the contribution and all redesignations must be received in writing from the contributor within sixty days of receipt of the contribution. *Id.* All redesignations must be reported by the recipient committee, and shall disclose the

original contribution information, the election for which the contribution was redesignated and the date on which the redesignation was received by the committee. 11 C.F.R. § 104.8(d)(2)(i). Although the Commission's regulations contain no separate provision addressing a committee's initial reporting of the election designations, treasurers of political committees are responsible for the accuracy of all information disclosed in the committees' reports. *See* 11 C.F.R. § 104.14(d).

A candidate for election to the U.S. Congress from Connecticut could potentially face three separate elections, the party nominating convention, a primary election and a general election, each with a separate contribution limit. In the present case, James Maloney was nominated by the Democratic Party's nominating convention on July 13, 1998 as the Democratic candidate for Congress from Connecticut's fifth congressional district. Mr. Maloney did not face a primary challenger and, thus, a primary election was not held for this office. The 98 Maloney Committee did not incur any outstanding debts from the nominating convention and, therefore, could not receive contributions for this election after July 13th.

The 98 Maloney Committee did assume the debts from Mr. Maloney's 1994 and 1996 campaign committees. During the period at issue these debts totaled approximately $42,944.93 and $13,443.24, respectively. Accordingly, after the nominating convention on July 13th, the 98 Maloney Committee could legally accept only contributions for the upcoming general election, or for the two previous campaigns' outstanding debts. All contributions received after the nominating convention and not specifically designated by the contributor should have been reported by the 98 Maloney Committee as for the general election and aggregated with other general election contributions from the same

source. Contributions which were specifically designated by the contributor for the primary election should have either been refunded or redesignated in writing by the contributor to the general election or to retirement of the 1994 or 1996 debt within sixty days of receipt.

B. Receipt and Reporting of Primary Contributions – Friends of Jim Maloney

1. Complaint

The Complainant alleges that those contributions received by the 98 Maloney Committee after the nominating convention date and reported as for the primary election were excessive and "unlawfully" received by the Committee because there was no separate contribution limit available for a primary election. Complainant notes that the contributions at issue should have been applied towards the general election contribution limit and that, if so applied, Respondents would have accepted $5,650 in excessive aggregate contributions. Complainant also seems to suggest that Respondents' violations are aggravated because they were provided advance notice of the unavailability of a separate primary election contribution limit under the present circumstances. In advancing this allegation, Complainant cites to the receipt by the candidate's previous campaign committee, Maloney for Congress '96, of a Request for Additional Information ("RFAI") from the Commission's Reports Analysis Division ("RAD") informing the 96 campaign that no contributions could be accepted for the nominating convention after the conclusion of that election if no debts remained from the convention. *See* RFAI to Maloney Congress '96, dated December 3, 1996.

2. Response

In response, the 98 Maloney Committee does not substantially challenge the factual allegations in the complaint or the application of the Act's contribution limits to the present matter.[1] Instead, Respondents essentially present a mitigation argument, noting that the committee began seeking and making corrections as to the primary contributions prior to being notified of the complaint by the Commission, although apparently after being informed of the apparent violations through other sources, and that it filed amendments correcting the majority of the contributions on October 15, 1998 – prior to the general election. Respondents further argue that only a minimal amount of contributions, when properly counted towards the general election and aggregated with other general election contributions, resulted in the receipt of excessive contributions, only one of which had to be refunded because redesignation was not available.

3. Amount at Issue and Corrective Actions Taken

Initially, it appears that Complainant has overstated the amount at issue in this matter. According to the Complainant's calculations, the 98 Maloney Committee received a total $132,025.45 in contributions for the primary election. Complainant further alleges that when properly attributed to the general election, the next election following the nominating convention, a total of $5,650 in contributions is in excess of the general election limits. Complainant suggests that these excessive contributions should

[1] Respondents do suggest that Connecticut's three tiered election process raises many issues not addressed by the Commission, specifically noting that the Commission has never directly addressed whether a candidate not participating in a primary election need even file reports during the period that other congressional district primaries are being held. However, the present issue concerning the unavailability of a separate primary election limit is well settled and Respondents do not directly contest this point.

therefore have been immediately refunded, as should another $7,175 in primary contributions because the sixty-day period for redesignation of these contributions had expired at the time of the filing of the complaint.

As noted, a review of the committee's reports substantiates Complainant's core allegation – the 98 Maloney Committee did report numerous contributions received after the nominating convention as for the non-existent primary election. However, this review of the committee's reports discloses that the committee accepted a total of $95,625.45 for the primary election – not $132,025.45 as represented by Complainant.[2] Of this amount, $26,250 was designated by the contributor for the primary according to Respondents, and $70,375.45 was not designated by the contributor. After corrective actions were taken, only $1,500 resulted in excessive receipts for the general election.[3]

It appears that upon notice of the misdesignations, the Committee took prompt corrective action. Contrary to Complainant's allegations, not all contributions received more than sixty days prior to the filing of the complaint had to be refunded by the committee due to expiration of the sixty-day window for taking corrective action. The sixty-day window applies only to contributions specifically designated by the contributor or to contributions which are rendered excessive when aggregated with other general

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[2] This adjustment from the amounts at issue cited by Complainant is primarily based upon two calculations. A review of the committee's reports disclosed that certain contributions alleged to have been reported as for a "primary" election had in fact been properly reported as for the general. Accordingly, these contributions have been excluded from the total at issue. Also excluded from the amounts at issue are contributions originally designated by the contributor for a primary election but properly corrected by the committee upon receipt and prior to being reported, as permitted by the Commission's Regulations.

[3] A total of $3,400 in misdesignated primary contributions would have exceeded the general election contribution limit if aggregated with other general election contributions. However, Respondents timely corrected $1,900 of this amount either through refunds or by redesignation to prior cycle debts assumed by the 98 Maloney Committee.

election contributions from the same source. To the extent that the Committee unilaterally reported various contributions as for the primary, the Committee could amend its reports to correctly disclose these contributions as general election contributions without the required written redesignation from the contributor. According to the Committee's response, of the total amount remaining at issue, only $26,500 required contributor notification, either because the contribution was specifically designated for the primary election and/or because the contribution was excessive when aggregated with other general election contributions. Accordingly, the Committee could unilaterally amend its report to disclose the proper election for the majority of the contributions at issue. Respondents did exactly this by amending the Committee's 1998 Pre-Primary Report on October 15th, thus properly disclosing the contributions prior to the next scheduled election.

Concerning those contributions specifically designated by the contributor and/or those contributions resulting in aggregate excessive general election contributions, the Committee had a maximum of sixty days to take corrective action. *See* 11 C.F.R. §§ 110.1(b)(3)(i) and (b), 11 C.F.R. §§ 110.2(b)(3)(i) and (b). The Committee represents in its response that it did take timely corrective action as to the majority of these contributions. The Committee's reports and response disclose that of a total of $26,500 in contributions requiring the contributor's redesignation authorization, only two contributions totaling $4,000 had to be refunded because the sixty-day window had expired. In fact, only $1,500 of the $4,000 not corrected timely resulted in the receipt of an excessive contribution when applied to the general election. Further, another contribution for $1,000 had to be refunded because redesignation was not available

($1,000 of the $2,000 primary contribution from Barbara Kennelly for Congress at issue), one contribution totaling $250 was refunded at the contributor's request, and the remaining $21,250 in contributions requiring written redesignations were timely corrected by either the contributors' redesignation to the general election or to retirement of the debt assumed from the candidate's prior campaign committees ($150 towards the 1994 debt and $1,000 towards the 1996 debt).

While it does appear that the 98 Maloney Committee took the proper corrective actions, because committees are not required to file copies of either contribution checks or redesignation forms with the Commission, this Office does not have a full record from which to authenticate the timeliness of these redesignations. Under the Commission's regulations, Respondents were required to disclose in their reports the date they received the written redesignations from the contributors. *See* 11 C.F.R. § 104.8(d)(2)(i). Although they filed amendments concerning these contributions, Respondents failed to provide the receipt date of the written redesignations. However, a review of the available information does support the Committee's claim that it took timely corrective action. The Commission has obtained copies of the 98 Maloney Committee's redesignation requests. All requests are dated September 30, 1998. Assuming that the Committee provided redesignation requests for all the contributions requiring written redesignation on the same date, and that responses were promptly received, all the redesignations at issue would have occurred within the sixty-day window. Because the 98 Maloney Committee was informed through the filing of the complaint of all the improper contributions at the same time, it is likely that the necessary redesignation requests were all made in unison.

4. Legal Analysis

a. Precedents

As precedent in this matter Complainant cites to MUR 1775 and FEC v. Wofford, which represent two different approaches to the present issue. As with the present case, MUR 1775 also involved a candidate for the U.S. House of Representatives from Connecticut nominated by party convention who subsequently accepted approximately $100,000 in contributions for a primary election that was not in fact held. The Commission viewed the matter as a misreporting case, concluding that the contributions *should have been properly reported as for the next scheduled election, the general* election, and found the candidate's campaign committee in violation of 11 C.F.R. § 104.14(d) for incorrectly reporting the contributions. However, the Commission took no further action because the committee did not receive any excessive general election contributions as a consequence of misdesignations, the committee acknowledged its error, and the committee took timely corrective action upon notification of the complaint prompting the enforcement matter.

In FEC v. Wofford, Civil No. 1:CV-94-2957 (M.D. Pa. filed Jan. 31, 1996), the respondent committee actively solicited contributions for a primary election which was not held because the candidate had been nominated by a special nominating convention of the Democratic Party of Pennsylvania. In litigation, the parties stipulated that the committee accepted a total $198,075 in excessive contributions when the post-convention primary contributions were applied to the general election, and the committee was fined $15,000 by the court for violations of 2 U.S.C. § 441a(f) – the amount of funds remaining in its account at that time.

However, Wofford is distinguishable from both MUR 1775 and the present matter. In Wofford the campaign actively participated in an effort by the state party to expand the nominating convention election period to keep parity with the opposition party's nominating convention date. The Democratic nominating convention was held on June 1, 1991. On that date the party endorsed Wofford as its nominee, but withheld certification until September 15th pending the Republican Party's endorsement of their candidate.[4] During the intervening period, Wofford's committee benefited from the prolonged nomination process by soliciting and receiving contributions for the nominating convention election. The campaign consistently challenged the Commission interpretation of the election date and refused to take corrective action, arguing that the election was not in fact concluded until the nomination certification was filed with the Secretary of State.

These aggravating factors are not present in the instant matter. Like the respondents in MUR 1775, the 98 Maloney Committee promptly corrected the misdesignations, which resulted in the receipt of only $1,500 in excessive contributions, belying any notion that they had attempted to skirt the contribution limits, or otherwise gain an advantage, by accepting primary contributions after the nominating convention. Accordingly, this matter is best analyzed consistent with MUR 1775.

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[4] Respondents also argued that the state party was delaying certification awaiting the resolution of a pending judicial challenge to the state's statute authorizing state political parties to nominate candidates in special elections. The Commission accommodated Respondents' argument by excluding from the violations at issue all contributions received between the period that the district court upheld the judicial challenge and the date the appellate court overturned the district court's ruling. *See* General Counsel's Report in MUR 4320, dated 4/4/94, at p. 1 n.1.

b. Notice

Complainant does seem to allege that the violations at issue are otherwise aggravated because the predecessor Maloney committee was put on notice of the unavailability of a separate primary election contribution limit under the present circumstances. In making this allegation, Complainant cites to a December 1996 RFAI from RAD to the 96 Maloney campaign. However, the cited RFAI did not directly address the present issue -- the unavailability of a separate primary contribution limit where a candidate is nominated by party convention and faces no other opposition until the scheduled general election. *See* RFAI to Maloney for Congress '96, dated December 3, 1996. The 96 Maloney campaign reported numerous contributions received after the Democratic Party's nominating convention as "convention" contributions. RAD informed that committee through the RFAI that, because the convention election had passed and the committee had incurred no outstanding debts from the convention, these contributions should have been applied to the next election. Yet, the notification was silent on the present question of which election was properly the next election. Moreover, in the 1996 election cycle, Mr. Maloney did in fact face a separate challenge. In addition to the Democratic nomination, in 1996 Mr. Maloney pursued the nomination of the "A Connecticut Party" -- a separate political party granted ballot space for the general election. Consequently, the 1996 contributions identified by RAD had been properly reported as for this separate election. Accordingly, contrary to Complainant's representation, the 98 Maloney Committee was not directly informed by the Commission of applicability of the law to the circumstances at issue in the present matter, and the violations at issue are thus not aggravated as they were in Wofford.

c. Remaining Violations by Friends of Jim Maloney

As stated above, the committee failed to take timely corrective action as to two contributions totaling $4,000 which had been specifically designated to a primary election. Although refunded, these two contributions were refunded outside the sixty-day window. However, when properly applied to the general election, only one of these contributions resulted in the receipt of an aggregate excessive general election contribution, in the amount of $1,500, in violation of 2 U.S.C. § 441a(f).

The various misdesignations also resulted in a reporting violation. By improperly reporting the contributions at issue in the Committee reports filed with the Commission as for a primary, the committee's treasurer, Patricia Draper, failed to insure the accuracy of all information disclosed in the Committee's reports, as required by 11 C.F.R. § 104.14(d). Similarly, by failing to disclose the redesignation dates for those contributions requiring written redesignations by the contributor, the committee failed to comply with 11 C.F.R. § 104.8(d)(2)(i), and the committee's treasurer again failed to comply with 11 C.F.R. § 104.14(d). By failing to comply with the Commission's regulations interpreting the Act's reporting requirements, both the Committee and its treasurer violated 2 U.S.C. § 434.

Accordingly, there is reason to believe that Friends of Jim Maloney and Patricia Draper, as treasurer, violated 2 U.S.C. §§ 441a(f) and 434.

Consistent with MUR 1775, and in consideration of the 98 Maloney Committee's efforts to correct the violations at issue, of the absence of any factors aggravating the violations and of the minimal number of excessive contributions received by the

Committee as a result of the misdesignations, the Commission has decided to take no further action as to these violations.

C. Excessive Contributions by Barbara Kennelly for Congress

In addition to the above allegations, Complainant also alleges that the 98 Maloney Committee accepted a $1,000 excessive contribution from Barbara Kennelly for Congress ("Kennelly Committee"). Candidate committees are limited to making $1,000 in contributions per election to other candidate committees. *See* 2 U.S.C. § 441a(a)(1)(A). Information provided by the Kennelly Committee discloses that the $2,000 contribution to the Maloney campaign "was to be" designated $1,000 each for the primary and general elections. The Kennelly Committee notes that it believed at the time of the contribution that the deadline for primary election contributions was September 15, 1998 (the date the primary would have been held had Mr. Maloney faced a challenge).

Based on information available on the public record, it is known that the Kennelly Committee made a $2,000 contribution on August 11, 1998 to the Maloney Committee which was received on August 13th and reported by the recipient for a primary election. However, it appears that the 98 Maloney Committee corrected this excessive contribution within the sixty-day prescribed period. According to the 98 Maloney Committee's reports and the Kennelly Committee's reports, $1,000 of this contribution was refunded on October 1, 1998. It also appears that the remaining $1,000 was redesignated by the contributor to the general election sometime prior to the 98 Maloney Committee's filing of its amended pre-primary report on October 15, 1998. The refund clearly was made within the prescribed period; moreover, the amended report was filed only three days

after expiration of the sixty-day window, suggesting that the redesignation was received sometime prior to the report's completion and transmission, presumably within sixty days. Consequently, it appears that the contribution was timely corrected and did not result in the making or receipt of an excessive contribution. Accordingly, there is no reason to believe that Friends of Jim Maloney and Patricia Draper, as treasurer, violated 2 U.S.C. § 441a(f) in connection with the August 13, 1998 contribution from Barbara Kennelly for Congress.

III. CONCLUSION

There is reason to believe that Friends of Jim Maloney and Patricia Draper, as treasurer, violated 2 U.S.C. §§ 441a(f) and 434.

There is no reason to believe that Friends of Jim Maloney and Patricia Draper, as treasurer, violated 2 U.S.C. § 441a(f) in connection with the August 13, 1998 contribution from Barbara Kennelly for Congress.