



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 11, 1999

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Kenneth J. Herman, State Chairman
The Independence Party of New York
45 Dixon Avenue
Amityville, NY 11701

RE: MUR 4821

Dear Mr. Herman:

On October 14, 1998, the Federal Election Commission received your complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the respondents. See attached narrative. Accordingly, the Commission closed its file in this matter on June 10, 1999. This matter will become part of the public record within 30 days.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

A handwritten signature in black ink, appearing to read "F. Andrew Turley", is written over a horizontal line.

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Attachment
Narrative

MUR 4821
LAZIO FOR CONGRESS

Kenneth J. Herman, State Chair of the Ethics Committee of the Independence Party of New York, alleges that Lazio For Congress accepted \$209,982 in excessive contributions from 188 individuals and a partnership during the 1994, 1996 and 1998 election cycles. Mr. Lazio won the 1998 General election for New York's 2nd congressional district with 67% of the vote to John Bace's 30%.

In its response, Lazio For Congress denies that it received any excessive contributions, and asserts that the allegations arose from the complainant's misunderstanding of 2 U.S.C. § 441a(a) limits; specifically, that this provision permits individual contributions up to \$1,000 *per election*, which includes separate contributions for the primary election and general election, and not \$1,000 per year. Respondent, joined by 35 individual contributors who also filed responses, maintains that in nearly every case, the alleged excessive contributions represented separate contributions to the primary and general campaigns by the individuals involved, or contributions by a husband and wife using the same check. Some of the responses revealed minor reporting discrepancies or inadvertent minor excessive contributions, the total of which appears to be less than \$5,000.

Jack Essenberg, Chairman of the Independence Party of New York State Committee, also submitted a letter regarding this matter. He states that the complainant's use of Independence Party letterhead for filing the complaint was "...completely improper and unauthorized..." Mr. Essenberg further asserts that the Independence Party does not endorse Mr. Herman's complaint to the FEC.

Mr. Essenberg refers to Mr. Herman as "the Independence Party's candidate for New York's Second C.D.," though he did not file any reports and, according to internal database sources, did not appear on the 1998 ballot for either primary or general elections. Mr. Herman did run against Mr. Lazio in 1996, losing the General election by 33% to Lazio's 64%.

This matter is less significant relative to other matters pending before the Commission.