FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
Deloitte & Touche, LLP, *et al.*	)	**MUR 4850**
	)	

STATEMENT OF REASONS OF CHAIRMAN WOLD AND COMMISSIONERS MASON AND THOMAS

On June 20, 2000, the Commission rejected the recommendation of the General Counsel to find reason to believe that Respondent Deloitte & Touche, LLP ("D & T"), violated 2 U.S.C. §§ 441b and 441f, with two Commissioners voting in favor of the recommendation and three opposed.[1]

We write to explain our reasons for opposing the General Counsel's recommendation. We based our decision upon the lack of evidence in the complaint to support the allegation that D & T routed prohibited contributions through its partners or employees to the Committee to Re-Elect Vito Fossella.

The complaint alleged in conclusory fashion that "contributions made [to the Fossella Committee] via conduits or intermediaries appear to have been made from . . . DELOITTE & TOUCHE LLP." Complainant, who unsuccessfully opposed Congressman Fossella during the 1998 election, provided no basis for this allegation. In response to the complaint, counsel for D & T stated that it is "not aware that Deloitte & Touche has committed any violation of FECA or its accompanying regulations." The Fossella Committee reported to the Commission that 23 D & T employees made contributions during the 1997-98 election cycle. With two exceptions, these employees contributed only $250 and few of them were made on the same day

The General Counsel, reading the foregoing response as failing to deny affirmatively that D & T violated the Federal Election Campaign Act (FECA) with respect to the unnamed contributors or any of its employees, recommended that the Commission find reason to believe ("RTB") that D & T violated 2 U.S.C. §§ 441b and 441f. While Respondent could have made a more specific denial, the response corresponded in its level of generality to that of the complaint, which named neither any person nor D & T employees generally, as the object of its speculative assertion. Before the Commission finds RTB that FECA violations occurred based on nothing more

[1] Commissioner Elliott was absent from this Executive Session.

than insufficiently vigorous denials to mere conjecture, the regulated community should be given sufficient notice that such a lilliputian RTB threshold is being applied by the Commission.

During discussion of this issue in Executive Session, the General Counsel also stated that D & T's response suggested that it had not performed it own investigation of the matter. We find this inference irrelevant. A mere conclusory accusation without any supporting evidence does not shift the burden of proof to respondents. While a respondent may choose to respond to a complaint, *complainants* must provide the Commission with a reason to believe violations occurred. The burden of proof does not shift to a respondent merely because a complaint is filed. In this instance, the complaint states only that conduit contributions "appear to have been made." The complaint itself literally fails to make any factual showing to support an accusation that D & T violated the FECA. Thus, if we were to accept the General Counsel's close reading of the response, we would, in fairness, be compelled to find the complaint is deficient in precisely the same way. In fact, we do not normally apply such a rigorous standard to complaints. Nor should we do so for responses.

The only apparent evidence to which Complainant could have been referring was the fact that the Committee's reports showed that a number of D & T employees made contributions to the Committee, some on the same day. We can grant little, if any, weight to this fact. If the Commission were to accept that circumstance as sufficient evidence to make RTB findings of conduit contributions, we would have time for investigations of little else. The fact that several employees of the same company make contributions even on the same day, often after a fundraising drive, should raise no eyebrows. Moreover, in this case almost all of the contributions at issue were only $250. Conjecture that these were conduit contributions runs counter to our experience. In our experience, conduit contribution schemes tend to involve the $1,000 limit. Apparently, as the familiar adage goes, anything worth doing (including illegal matters) is worth doing well.

We note that we are very concerned about the number of conduit contribution cases the Commission has recently seen. Conduit contributions circumvent the core reporting provisions of the FECA and usually the contribution limits, and we are endeavoring to develop tools that allow for easier detection of conduit patterns. Nonetheless, we cannot allow mere conjecture (offered by a political opponent's campaign) to serve as a basis to launch an investigation, simply because the conjecture is met by less than the most explicit denial.

July 20, 2000

Darryl R. Wold, Chairman

David M. Mason, Commissioner

Scott E. Thomas, Commissioner