

BEFORE THE FEDERAL ELECTION COMMISSION**In the Matter of****MUR 4850****Committee to Re-Elect Vito Fossella
and Anthony J. Maltese, as treasurer****GENERAL COUNSEL'S REPORT # 3****I. ACTIONS RECOMMENDED****II. BACKGROUND**

On June 20, 2000, the Commission found reason to believe ("RTB") that the Fossella Committee violated 2 U.S.C. §§ 434(b)(3)(a) and 441a(f), 11 C.F.R. §§ 103.3(a), and 110.1(b)(3)(i). An investigation was conducted, including an audit of the Fossella Committee pursuant to 2 U.S.C. § 437g(a)(2). Subsequently, on March 19, 2002, the Commission found RTB that the Fossella Committee and Anthony J. Maltese, as treasurer, violated 2 U.S.C.

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§§ 434(b)(8) and 441a(f), and 11 C.F.R. § 104.11(a). Additionally, on March 19, 2002, the Commission authorized the Office of General Counsel to enter into pre-probable cause conciliation with the Fossella Committee provided that the Fossella Committee agreed to toll the statute of limitations for the period of conciliation. The Fossella Committee refused to toll the statute of limitations. Therefore, on April 16, 2002, this Office sent the Fossella Committee a General Counsel's Brief setting forth the basis on which it was prepared to recommend the Commission find probable cause to believe the Fossella Committee violated 2 U.S.C. §§ 441a(f), 434(b)(3)(A), 434(b)(8), 11 C.F.R. §§ 103.3(a), 104.11(a), and 110.1(b)(3)(i) of the Act and Commission regulations. The Brief is incorporated by reference into this Report. On May 1, 2002, Respondents requested an extension of time to file a Reply Brief. After an extension was granted to Respondents in exchange for a tolling of the statute of limitation,¹ Respondents filed a Reply Brief on May 16, 2002.

III. ANALYSIS

A. Primary Date

As a result of Representative Susan Molinari's August 2, 1997 resignation from her seat in the Thirteenth Congressional District of New York, a Special Election was held on November 4, 1997. Fossella sought the nomination of the Republican, Conservative, Freedom, Independence, and Right to Life parties. *Id.* Respondents argue that the "nominating process" started when both candidates received certificates of nomination from their respective parties and concluded when the Supreme Court of New York invalidated the

¹ The extension was for 16 days.

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1 **B. Violations of the Act and Commission Regulations**

2 **1. Receipt of Excessive Contributions**

3 Respondents argue that they did not accept excessive contributions for the following
4 reasons.

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1 Additionally, Respondents argue that the statements made by John Peter Sipp and
2 other contributors in response to the complaint should be recognized as proper
3 re-designations of their respective contributions. Reply Brief at 3, 16. Sipp's
4 December 3, 1998 response to the complaint is included in Exhibit 7 of the Reply Brief. In
5 the response, Sipp states that he made one \$250 contribution on May 5, 1998, and two
6 contributions on October 8, 1998: (1) a \$450 contribution for three tickets to a cocktail
7 reception; and (2) a \$1,300 contribution. Reply Brief, Exhibit 7, pg. 1. Sipp further states that
8 it was his understanding that one-half of the total contribution was applied to the Primary
9 Election fund, and the remaining half for the General Election fund. *Id.*

10 Respondents' request that contributor statements like Sipp's be considered as re-
11 designations appears to have merit. Contributors made statements responding to the
12 complaint in this matter in November and December of 1998. Of all the responses to the
13 complaint, only four contributors made statements within 60 days of the date of
14 their contributions.⁶ Although the Fossella Committee did not provide re-designation records
15 during the audit analysis, this Office believes that these statements should constitute
16 constructive re-designations for two reasons. First, as noted by the Audit Division in its
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⁶ In addition to Mr. Sipp, the following contributors responded to the complaint within 60-days of the date of the contribution: (1) Getz Obstfeld, who responded to the complaint on November 23, 1998, originally made a \$2,000 contribution on October 15, 1998; (2) Mark Lipton, who responded to the complaint on November 24, 1998, originally made a \$2,000 contribution on October 14, 1998; and (3) Steven Salami, who responded to the complaint on November 23, 1998, originally made three contributions totaling \$2,000 on October 24, 1998. In each response to the complaint, the contributors stated that it was their intention that the contributions be applied to the 1998 Primary and 1998 General Elections equally.

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1 July 2, 2001 memo, the Fossella Committee did have net debts outstanding at the time of the
2 1998 Primary Election. As such, the Fossella Committee could receive designated
3 contributions (for the 1998 Primary Election) made after the date of the 1998 Primary
4 Election. 11 C.F.R. § 110.1(b)(3)(i). Second, these statements were made within 60 days of
5 the date of the contributions, and appear to manifest the intent of the donors. Thus, this Office
6 believes that these contributions should not be included among the excessive contributions.

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V. **RECOMMENDATIONS**

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2. Find no probable cause to believe that the Re-Elect Vito Fossella and Anthony J. Maltese, as treasurer, violated 2 U.S.C. §§ 441a(f) regarding their receipt of contributions from Mark Lipton, Getz Obstfeld, Steven Salami, and John Sipp.
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- 4.
5. Approve the appropriate letter.

6/5/02
Date

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