




FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

MEMORANDUM

TO: The Commissioners
Staff Director
Deputy Staff Director
General Counsel

FROM: Office of the Commission Secretary 

DATE: September 18, 2000

SUBJECT: Statement Of Reasons for MURs 4779, 4808,
4820, and 4855

Attached is a copy of the Statement Of Reasons signed by
Chairman Darryl R. Wold and Commissioner David M. Mason. This was
received in the Commission Secretary's Office on Monday, September 18,
2000 at 2:36 p.m.

cc: Vincent J. Convery, Jr.
Press Office
Public Information
Public Disclosure

Attachment



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of Ehrlich for Congress, *et al.*;)
Rapoport for the First Committee, *et al.*;) MURs 4779, 4808, 4820 and 4855
Helen Chenowith, *et al.*; Committee to Elect)
Mike Burkhold to Congress, *et al.*)

STATEMENT OF REASONS OF CHAIRMAN DARRYL R. WOLD
AND COMMISSIONER DAVID M. MASON

On May 23, 2000 the Commission, pursuant to a pre-meeting tally vote, decided unanimously¹ to take no action and close the files with respect to MURs 4721, 4779 (Ehrlich for Congress), 4795, 4810, 4820 (Helen Chenowith), 4839, 4841, 4855 (Committee to Elect Mike Burkhold), 4865 and 4880. These closures had been recommended because the matters were stale, having sat on the Commission's docket for an extended period during which insufficient enforcement staff was available to permit assignment of all matters. On the same date, the Commission, by a 4-1 vote, found that there was no reason to believe (RTB) that the Respondents in MUR 4808 (Rapoport for the First), another stale MUR, had violated the Federal Election Campaign Act (FECA) and closed the file. Also on that date, the Commission directed the staff to activate another matter that had been recommended for closure as stale. We write to explain our conclusion that the Commission should have found no RTB in three additional MURs and to express our concern over the inconsistent treatment of these MURs.

MUR 4808

In MUR 4808, the complaint alleged that a Democratic candidate for Congress and a labor union engaged in excessive coordinated expenditures or, in the alternative, that the union made illegal independent expenditures. The Commission found no RTB that the Respondents had violated the FECA because of the absence of any evidence of coordination and, with respect to the alternative charge of illegal labor union expenditures, because the exhibits attached to the

¹ Commissioner Elliot was absent from this executive session.

complaint appear on their face to be legal communications made from the Connecticut AFL-CIO to its members. See 2 USC § 441b(b)(2)(A).²

We also believe that the Commission should have found no RTB with respect to MURs 4779, 4820 and 4855. Because our Democratic colleagues disagreed, we did not offer separate motions on these matters.

MUR 4779

In MUR 4779, the complaint alleged that a disclaimer was missing from a Towson University (MD) Alumni Relations publication, which contained a photograph of Republican Congressman Bob Ehrlich holding what appears to be a football jersey with the number "98" and above which is the name "Ehrlich." "General public political advertising" containing express advocacy requires a disclaimer. See 2 USC § 441d. Because the communication at issue did not constitute "general public political advertising," a no RTB finding was clearly appropriate. Secondly, there is some question as to whether the photograph at issue constituted express advocacy in any case. Finally, the photograph was part of a news story in a periodical publication, which is exempt under 2 U.S.C. § 431(9)(B)(i) from the definition of "expenditure" and, thus, exempt from the disclaimer requirements of § 441d.

MUR 4820

The complaint underlying MUR 4820 accuses Republican Rep. Helen Chenoweth and the Idaho Republican State Central Committee of violating the coordinated expenditure limitations of 2 USC § 441a(d)(3)(B). Curiously, the complaint failed even to allege that actual coordination took place between Chenoweth and the party committee. Chenoweth was also charged with knowingly accepting these contributions to her campaign. In MUR 4808, *supra*, the Commission found no RTB because there was no evidence to support the allegations made regarding coordination. In this matter, there was not even a clear allegation, much less any evidence, of coordination, so the Commission should have, similarly, found no RTB.

A no RTB finding in this MUR would have also been consistent with the Commission's approach in MUR 4545. There, the Commission found no reason to believe that the Clinton/Gore '96 Primary Committee had failed to properly allocate expenditures for an Amtrak charter train between the Primary Committee, the Secret Service and two White House offices. We did this in spite of (1) the General Counsel's observation that the "high cost of the Train Trip³ may raise the question of whether Amtrak was overpaid," FGCR at n.12; (2) the Audit Division's explanation that the "documentation, necessary to determine if the cost of the train trip was allocated properly, has not been made available" to the Commission, *id.* at 13 (quoting Memorandum to Kim Bright-Coleman); and (3) the Clinton/Gore committee had record keeping obligations that would have permitted a determination of whether a violation had occurred. *Id.* at

² Commissioner Wold opposed the no RTB finding, not because he disagreed with this analysis but because other matters on the same agenda were being treated dissimilarly. See *infra*.

³ "Amtrak stat[ed] that the Train Trip cost more than three times the amount of the next most expensive charter trip during that year." FGCR at 13-14.

16, n. 15. Nonetheless, there was no evidence provided in the complaint to support the allegations. For that reason, the Commission found no RTB. As stated above, applying the same standard would have produced the same result in MUR 4820.

MUR 4855

Finally, the complaint in MUR 4855 charges Mike Burkhold, Republican candidate for Congress, with either (1) failing to disclose substantial assets on his financial disclosure statement filed with the House of Representatives; (2) failing to report loans to himself from which his loans to the Committee were derived; or (3) reporting loans to the FEC that were never made. In addition, the Burkhold for Congress Committee is accused of failing to report all occupation/employer information and failing to use best efforts to identify contributor information.

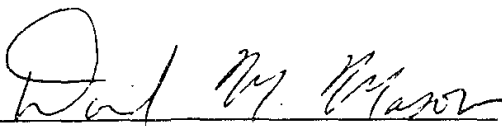
The alleged incompleteness in Burkhold's financial disclosure statement would not represent a potential FECA violation and, thus, we have no jurisdiction over that allegation. The residual charge of inaccurate reporting of loans to the Burkhold Committee is pure speculation.⁴ With respect to the missing occupation/employer information and the conjectural assertion that the Burkhold Committee failed to use best efforts in obtaining the same, the Respondents attested that all solicitations contained the required request for information under 11 CFR § 104.7(b)(1) and sent follow-up letters pursuant to Subsection (b)(2). Respondents also attached a sample solicitation letter containing the request for occupation/employer information. We consider these attestation and examples sufficient to refute the weak circumstantial evidence (based on minor deficiencies in reports) that the Committee failed to use best efforts to obtain contributor information. Thus, we would have found no RTB in this matter as well.

Inconsistent Treatment

Given the inadequacy of these three complaints, there is no reason why they, like MURs 4808 and 4545, should not have also been dismissed with no RTB findings. The complaints contained nothing but unsupported allegations, apparently involving pure conjecture or ignorance of the FECA. Thus, we see an inconsistency in handling these matters. Such disparate outcomes in this discrete set of cases could be the product of good faith disagreements about the standards we should apply or about the facts of particular matters. We are concerned, however, about the apparently inconsistent treatment, and the questions that inconsistent treatment can raise about whether other factors affected the outcomes.

September 18, 2000


Darryl R. Wold, Chairman


David M. Mason, Commissioner

⁴ The Burkhold Committee gratuitously responded that Burkhold sold an interest in Zeus Mediterranean Foods, LLC, from which personal loans to his authorized committee were made.