

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Dear for Congress, Inc., Dear 2000, Inc.,)
Friends of Noach Dear '93, and Abraham Roth)

MURs 4935 and 5097 APR 28 A 11: 21

SENSITIVE

GENERAL COUNSEL'S REPORT #22

I. ACTIONS RECOMMENDED

Find probable cause to believe that Dear for Congress and Abraham Roth, treasurer, violated 2 U.S.C. § 441f; 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a); 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(d); 11 C.F.R. § 104.5(a); 2 U.S.C. § 434(b)(4)(F) and 2 U.S.C. § 434(b)(8); and 2 U.S.C. § 434(a)(6)(A). Find probable cause to believe that Dear 2000, Inc. and Abraham Roth, treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a); and 2 U.S.C. § 434(b)(2) and 2 U.S.C. § 434(b)(4). Find probable cause to believe that Friends of Noach Dear '93 violated 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(1).

II. BACKGROUND

On July 25, 2000, following an audit of Dear for Congress (“ the Committee”), the Federal Election Commission (the “Commission”) approved reason to believe findings against the Committee involving several serious violations. The Commission found reason to believe that the Committee accepted excessive contributions of \$563,913 and prohibited corporate contributions of \$12,320. The Commission also found reason to believe that the Committee violated 2 U.S.C. § 441f by knowingly accepting contributions in the name of another totaling \$50,150 and authorized this Office to conduct an investigation into this apparent violation. Moreover, the Commission found

1 reason to believe that the Committee filed its July 1998 Quarterly Report and the 1998
2 Year-End Report late and improperly reported debts of \$300,878 as disbursements on its
3 1999 Mid-Year Report.¹ The Commission also found reason to believe that the
4 Committee failed to file or untimely filed 48-hour notices on contributions totaling
5 \$77,500. The Commission further found reason to believe that Friends of Noach Dear
6 '93 ("Friends of Dear") violated 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(1) by
7 making excessive contributions to Dear 2000, Inc. ("Dear 2000"). Finally, the
8 Commission found that Dear 2000 and Abraham Roth, as treasurer, violated
9 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a) by knowingly accepting an excessive
10 contribution and violated 2 U.S.C. § 434(b)(2) and 2 U.S.C. § 434(b)(4) by failing to
11 report the contribution.²

12 On March 1, 2003, the Commission entered into pre-probable cause conciliation
13 with the Committee, approving a conciliation agreement

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17 On April 2, 2003, this Office
18 hand-delivered to the Respondents four General Counsel's Briefs ("GC Briefs"),
19 incorporated herein by reference, recommending that the Commission find probable
20 cause to believe that each of the Respondents violated certain provisions of the Act. On

¹ The debt reporting violation involved the failure to properly report refunds owed to excessive contributors as debts. The Committee had reported them as disbursements, but had not, in fact, made the disbursements because it had insufficient funds to make the refunds

² This Report will refer to the captioned committees and individual as "the Respondents "

1 April 3, 2003, the Respondents requested an extension of twenty days within which to
2 reply, however, the Respondents would not agree to toll the statute of limitations for a
3 corresponding period. Nevertheless, this Office extended the deadline by an additional
4 four days.³

5 **III. ANALYSIS**

6 Respondents did not submit a reply brief on April 21, 2003. Because this matter
7 is greatly affected by a running statute of limitations, we recommend that the
8 Commission move forward expeditiously to resolve these matters.

9 We want to make the Commission aware of a couple of points made during
10 conversations with Respondents' counsel. First, they have made the following points
11 with respect to the potential 441f finding:

- 12 • the deposition testimony of Scott Garrison did not provide any direct
13 evidence of a section 441f violation.
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- 15 • the source of the funds for the section 441f violation has not been
16 established, and it is possible that the contributors themselves provided the funds, even if
17 a committee employee filed in the money orders for them.
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19 In our view, Mr. Garrison's testimony provides insight into the operation of the
20 campaign and identifies individuals who were in a position to set up and execute a
21 conduit contributions scheme. His testimony contradicts Ms. Vais' characterization of
22 her role and is consistent with information set forth in Nick Lagemann's affidavit. His
23 testimony is not central to our investigation and admittedly does not provide direct
24 evidence of a violation. As is apparent from our Briefs, the best evidence of the section

³ The Respondents based their request on a conflict with the Passover holiday. The reply briefs were due on April 17, 2003, and Passover began at sundown on April 16, 2003. Respondents did not explain why they could not submit the Briefs one day early to avoid the conflict with Passover. Additionally, the 20-day extension would have taken the due date well beyond the end of Passover. This Office decided to provide some flexibility with respect to the Respondents' request and extended the due date to Monday, April 21, 2003.

1 441f violation comes from individual contributors who denied making contributions, the
2 presence of the handwriting of committee staff on the money orders, and the patterns of
3 sequential money orders, each containing at least some evidence of a contribution in the
4 name of another.

5 Counsel for the Respondents have also argued that the GC Briefs failed to show
6 the source of funds used in the contribution in the name of another scheme. We
7 acknowledge in the GC Briefs that the source of the funds is unidentified. Nevertheless,
8 other facts, such as a Committee staff member admitting to filling out money orders and
9 identifying another staff member's handwriting on money orders, and information from
10 purported contributors establishing that they did not make contributions to the
11 Committee, are persuasive evidence in reaching the conclusion that the Committee
12 violated 2 U.S.C. § 441f. Thus, it can be inferred that the Committee staff members who
13 filled out money orders must have known that those individuals whose names they
14 entered on money orders were not the actual contributors.

15 In sum, the Respondents failed to submit reply briefs
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1 **IV. DISCUSSION OF CONCILIATION AND CIVIL PENALTY**

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Attached for the Commission's approval is a proposed conciliation agreement

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V. RECOMMENDATIONS

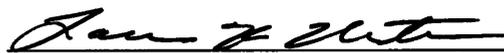
1. Find probable cause to believe that Dear for Congress and Abraham Roth, treasurer, violated 2 U.S.C. § 441f by accepting contributions in the name of another;
2. Find probable cause to believe that Dear for Congress and Abraham Roth, treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a) by accepting excessive contributions.
3. Find probable cause to believe that Dear for Congress and Abraham Roth, treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(d) by accepting prohibited contributions;
4. Find probable cause to believe that Dear for Congress and Abraham Roth, treasurer, violated 11 C.F.R. § 104.5(a) by failing to timely file disclosure reports;
5. Find probable cause to believe that Dear for Congress and Abraham Roth, treasurer, violated 2 U.S.C. § 434(b)(4)(F) and 2 U.S.C. § 434(b)(8) by improperly reporting refunds and failing to report debts;
6. Find probable cause to believe that Dear for Congress and Abraham Roth, treasurer, violated 2 U.S.C. § 434(a)(6)(A) by failing to file 48-hour notices or filing untimely 48-hour notices;
7. Find probable cause to believe that Dear 2000, Inc. and Abraham Roth, treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a) by knowingly accepting an excessive contribution;
8. Find probable cause to believe that Dear 2000, Inc. and Abraham Roth, treasurer, violated 2 U.S.C. § 434(b)(2) and 2 U.S.C. § 434(b)(4) by failing to report a contribution;
9. Find probable cause to believe that Friends of Noach Dear '93 violated 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(1) by making an excessive contribution;

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10. Approve the attached conciliation agreement;

11. Approve the appropriate letters.

4/25/03
Date


Lawrence H. Norton
General Counsel


Gregory K. Baker
Acting Associate General Counsel


Peter G. Blumberg
Acting Assistant General Counsel


Delbert K. Rigsby
Attorney

Danita C. Lee
Attorney

Attachment
Proposed Conciliation Agreement