

BEFORE THE FEDERAL ELECTION COMMISSION

2003 MAY 14 P 3:35

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

In the Matter of)
Ferguson for Congress and) MUR. 5138
William Morrison, as treasurer)
Representative Michael Ferguson)
Thomas and Roberta Ferguson)

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Thomas P. Giblin, Chairman of the New Jersey Democratic State Committee, and pursuant to information ascertained by the Federal Election Commission ("Commission") in the normal course of carrying out its supervisory responsibilities. An investigation was conducted, and the Commission found probable cause to believe that Thomas and Roberta Ferguson violated 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3); Representative Michael Ferguson violated 2 U.S.C. § 441a(f); and Ferguson for Congress and William Morrison, as treasurer, (collectively "Respondents") violated 2 U.S.C. §§ 441a(f) and 434(b).

NOW, THEREFORE, the Commission and the Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:¹

1. Thomas and Roberta Ferguson are the parents of Representative Michael Ferguson. Thomas and Roberta Ferguson are "persons" within the meaning of 2 U.S.C. § 431(11).

2. At all pertinent times, Michael Ferguson was a "candidate" within the meaning of 2 U.S.C. § 431(2).

3. Ferguson for Congress is a political committee within the meaning of 2 U.S.C. § 431(4), and was Michael Ferguson's authorized committee for his 2000 Congressional race in the 7th District of New Jersey.

4. William Morrison is the treasurer of Ferguson for Congress.

5. The Federal Election Campaign Act of 1971, as amended (the "Act"), prohibits any person from making contributions "to any candidate and his authorized political committee with respect to any election for Federal office which, in the aggregate, exceed \$1,000." 2 U.S.C. § 441a(a)(1)(A). A contribution is any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(8)(A)(i).

¹ All of the facts recounted in this agreement occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended (the "Act"), herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA. All statements of the law in this agreement that are written in the present tense shall be construed to be in either the present or the past tense, as necessary, depending on whether the statement would be modified by the impact of BCRA or the regulations thereunder.

23-04-406-1266

1 6. In addition, the Act prohibits any individual from making contributions
2 "aggregating more than \$25,000 in any calendar year." 2 U.S.C. § 441a(a)(3). For purposes
3 of 2 U.S.C. § 441a(a)(3), "[A]ny contribution made to a candidate in a year other than the
4 calendar year in which the election is held with respect to which such contribution is made, is
5 considered to be made during the calendar year in which such election is held." See 11
6 C.F.R. § 110.5(c)(2).

7 7. The Act prohibits any candidate or political committee from knowingly accepting
8 any contribution or making any expenditure in violation of the provisions of section 441a. 2
9 U.S.C. § 441a(f).

10 8. Any candidate who receives a contribution in connection with his or her
11 campaign shall be considered as having received such contribution as an agent of his or her
12 authorized committee. 2 U.S.C. § 432(e)(2).

13 9. All contributions made by persons other than political committees must be
14 reported in accordance with 2 U.S.C. § 434(b)(2)(A). Political committees must report the
15 identification of each person who makes a contribution or contributions with an aggregate
16 value in excess of \$200 during the reporting period, together with the date and amount. 2
17 U.S.C. § 434(b)(3).

18 10. Thomas and Roberta Ferguson, directly and indirectly, were financially generous
19 to each of their four children prior to September 2000.

20 11. Thomas Ferguson submitted an affidavit stating that both he and Roberta
21 Ferguson had suffered from life-threatening cancer and had established a trust to ultimately
22 equally benefit their four children in furtherance of their estate planning goals, and that as of
23 September 2000, only Michael Ferguson's interest in the trust had vested.

23-04-406-1267

12. In September 2000, after Michael Ferguson became a candidate, Thomas and Roberta Ferguson transferred substantial funds to Michael Ferguson through the trust.

13. After Michael Ferguson received the funds from the trust, he transferred a portion of those funds, \$525,000, to Ferguson for Congress, which was reported as loans from Michael Ferguson.

14. Prior to the effective date of the trust and the transfer of the funds from the trust to Michael Ferguson, Michael Ferguson sought and obtained an opinion of counsel that the transfer was not a violation of the Act. After he obtained the legal opinion, the trust became effective and the funds were transferred.

V. 1. Michael Ferguson, Thomas and Roberta Ferguson, and Ferguson for Congress and William Morrison as Treasurer, acting on advice of counsel, did not knowingly and willfully violate the Act, but, in order to resolve all issues raised in this matter and to avoid litigation, will not contest the probable cause determination of the Commission that Thomas and Roberta Ferguson made excessive contributions of \$525,000 to Michael Ferguson's 2000 campaign for Federal office in violation of 2 U.S.C. §§ 441a(a)(1)(A) and (a)(3), that Michael Ferguson and Ferguson for Congress, through its agent Michael Ferguson, accepted excessive contributions of \$525,000 from Thomas and Roberta Ferguson in violation of 2 U.S.C. § 441a(f), and that Ferguson for Congress improperly reported these contributions as loans from Michael Ferguson in violation of 2 U.S.C. § 434(b).

2. Thomas and Roberta Ferguson will cease and desist from violating 2 U.S.C. 441a(a)(1)(A) and (a)(3), Representative Michael Ferguson will cease and desist from violating 2 U.S.C. § 441a(f), and Ferguson for Congress and William Morrison, as treasurer, will cease and desist from violating 2 U.S.C. §§ 441a(f) and 434(b).

1 VI. 1. Respondents will pay a civil penalty to the Federal Election Commission in the
2 amount of Two Hundred and Ten Thousand dollars (\$210,000), pursuant to 2 U.S.C.
3 § 437g(a)(5)(A).

4 2. Ferguson for Congress and William Morrison, as Treasurer, will amend their
5 disclosure reports to recharacterize \$525,000, previously reported as loans from Michael
6 Ferguson, as contributions from Thomas and Roberta Ferguson.

7 VII. The Commission, on request of anyone filing a complaint under 2 U.S.C.
8 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review
9 compliance with this agreement. If the Commission believes that this agreement or any
10 requirement thereof has been violated, it may institute a civil action for relief in the United
11 States District Court for the District of Columbia.

12 VIII. This agreement shall become effective as of the date that all parties hereto have
13 executed same and the Commission has approved the entire agreement.

14 IX. Respondents shall have no more than 60 days from the date this agreement becomes
15 effective to comply with and implement the requirements contained in this agreement and to so
16 notify the Commission.

17 X. This agreement resolves all issues arising under MUR 5138.

23-04-406-1269

XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence H. Norton
General Counsel

BY:

Rhonda J. Vosdigh (by u)
Rhonda J. Vosdigh
Associate General Counsel
for Enforcement

Date

6/13/03

FOR THE RESPONDENTS:

James Bopp, Jr.
James Bopp, Jr.
Counsel for Respondents

Date

May 13, 2003

23.04.406.1270