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FEDERAL ELECTION COMMISSION
999 E Streets, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5185
DATE COMPLAINT FILED: 3/26/01
DATE OF NOTIFICATION: 4/3/01
DATE ACTIVATED: 8/23/01
DATE TRANSFERRED: 4/15/02
STATUTE OF LIMITATIONS: 3/25/05

COMPLAINANT: Judicial Watch, Inc., by
Thomas J. Fitton, President

RESPONDENTS: Hillary Rodham Clinton
Hillary Rodham Clinton for US Senate
Committee, Inc. and Harold Ickes,
as Treasurer¹
William Jefferson Clinton
Denise Rich
Anthony Rodham
Hugh Rodham
Rabbi David Twersky

RELEVANT STATUTES: 2 U.S.C. § 431(4)(A)
2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 434(a)(1)
2 U.S.C. § 434(b)(4) and (5)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(a)(3)
2 U.S.C. § 441a(f)
11 C.F.R. § 100.7(a)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

¹ At the time the complaint was filed, William J. Cunningham was treasurer of the Committee. Harold Ickes became treasurer of the Committee on January 1, 2002.

I. INTRODUCTION

This matter was initiated by a complaint filed on behalf of Judicial Watch, Inc., by its president, Thomas J. Fitton. The complaint alleges that Senator Hillary Rodham Clinton received excessive campaign contributions from Denise Rich in the form of monetary contributions and gifts of furniture and that Ms. Rich made these contributions in exchange for former President William J. Clinton's pardon of her ex-husband, Marc Rich. In addition, the complaint alleges that former President Clinton granted four men from New Square, New York, commutations of their fraud sentences in exchange for support of his wife's election to the Senate. The complaint also alleges that as a result of efforts by Hugh and Anthony Rodham, Senator Clinton's brothers, to secure pardons and sentence commutations for other individuals, candidate Hillary Clinton may have received a portion of the money that her brothers received as payment for their efforts.

This Office concludes that there is no reason to believe that violations of the federal election laws occurred and therefore recommends that the Commission find no reason to believe violations occurred with respect to all the respondents and close the file.

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law²

Pursuant to the Federal Election Campaign Act of 1971, as amended ("the Act"), a contribution is "any gift, subscription, loan, advance, or deposit of money or anything of value

² The activity in this matter is governed by the Federal Election Campaign Act of 1971, as amended, ("the Act"), and regulations in effect during the pertinent time period, which precedes the effective date of the amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). All references to the Act and regulations in this Report exclude the changes made by BCRA.

made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). The Act also states that no person shall make a contribution to a candidate and his authorized political committee with respect to any election for Federal office which, in the aggregate, exceeds \$1,000. 2 U.S.C. § 441a(a)(1)(A). In addition, the Act states that no individual shall make contributions aggregating more than \$25,000 in any calendar year. 2 U.S.C. § 441a(a)(3). The Act also prohibits candidates and political committees from knowingly accepting an excessive contribution. 2 U.S.C. § 441a(f).

The Act defines a political committee as "any committee, club, association or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year." 2 U.S.C. § 431(4)(A). The Act requires all political committees to file reports of their receipts and disbursements. 2 U.S.C. § 434(a)(1). Among other things, each report must contain, for the reporting period and the calendar year to date, the total amount of all the committee's disbursements, 2 U.S.C. § 434(b)(4), and the total amount of disbursements in each of several specified categories, one of which is "contribution refunds or other offsets to contributions." 2 U.S.C. § 434(b)(4)(F). Moreover, each report must contain the name and address of each "person who receives a contribution refund or other offset to contributions from the reporting committee where such contribution was reported under paragraph (3)(A) of this subsection, together with the date and amount of such disbursement." 2 U.S.C. § 434(b)(5)(E). The Commission's regulations further require that committees report separately the total of itemized and unitemized offsets to contributions (including refunds). 11 C.F.R. § 104.3(b)(1)(iv) and (2)(v).

B. Complaint and Responses

1. Denise Rich's Alleged Excessive Contributions in Exchange for Pardon

The complaint alleges that Hillary Clinton accepted contributions from Ms. Rich in violation of the contribution limits set forth at Section 441a(a)(1)(A). The complaint alleges that Ms. Rich made monetary contributions totaling \$70,000 and in-kind contributions of furniture totaling \$7,375 to then-candidate Hillary Clinton in exchange for a pardon for her ex-husband, Marc Rich, that was granted by former President Clinton.³ According to Judicial Watch, Senator Clinton failed to report as "offsets to contributions" the value of the services she allegedly provided to Ms. Rich relative to the pardon. Complaint at 4 and 7.

Additionally, the complaint notes that Ms. Rich asserted her Fifth Amendment privilege in response to questions by the United States House Government Reform Committee, which investigated President Clinton's grant of a pardon to Marc Rich and therefore, urges the Commission to draw an adverse inference against Ms. Rich based on her Fifth Amendment invocation before Congress. The complaint also states that the Commission should draw an adverse inference against Senator Clinton based on Ms. Rich's assertion of her Fifth Amendment privilege. According to the complaint, courts may draw adverse inferences against parties based on their employees' or agents' assertion of their Fifth Amendment privilege.

Senator Clinton, the Hillary Rodham Clinton for US Senate Committee, Inc. and former President William J. Clinton ("Respondents") responded jointly and argue that "[t]here is no conceivable way to convert Mr. Fitton's pardon-theories to a violation of the Act." Joint Response at 2. Respondents do not specifically address the allegations that Ms. Rich contributed

³ A disclosure form filed by then President Clinton with the United States Office of Government Ethics describes the furniture as two coffee tables and two chairs.

1 \$70,000 in monetary contributions to help fund Hillary Clinton's Senate campaign. With respect
2 to former President Clinton, the response dismisses the allegations as irrelevant to the Act
3 because the former President had not been a candidate for Federal office for more than five years.
4 *Id.*

5 In regard to the alleged in-kind contributions of furniture, respondents assert that the
6 furniture donated by Ms. Rich was not given for the purpose of influencing an election. Joint
7 Response at 1. Respondents indicate that Mr. Clinton and the First Lady received gifts from
8 various persons over the course of Mr. Clinton's presidency and all gifts were properly received
9 by the Clintons pursuant to the Office of Government Ethics gift rules, with the vast majority
10 being donated to the National Archives. *Id.* According to respondents, the former President
11 disclosed the list of gifts that the Clintons received in the year 2000 and intended to keep in his
12 January 2001 personal financial disclosure report. *Id.* Respondents attached to their response a
13 statement that the former President issued on February 2, 2001 indicating that the Clintons had
14 paid for all the gifts that they were keeping and which included a list of such items. The list
15 attached to the statement included Ms. Rich's gifts of furniture.

16 In her response, Ms. Rich asserts that the complaint is made against Senator Clinton, not
17 herself, and that the complaint neither claims nor establishes that Ms. Rich violated the Act.
18 With respect to the \$70,000 in political contributions to Senator Clinton referenced in the
19 complaint, Ms. Rich states that it appears that the complaint is referencing the soft-money
20 contributions that she made to the New York Senate 2000 Committee Non-Federal Account.⁴

⁴ "New York Senate 2000" is registered with the IRS under section 527 of the Internal Revenue Code. Ms. Rich's contributions to "New York Senate 2000" are listed on the Committee's disclosure forms filed with the IRS.

1 Ms. Rich further asserts that these soft-money contributions do not violate any contributions
2 limits of the Act.

3 With respect to the allegation that Ms. Rich made the contributions at issue in exchange
4 for the pardon of Marc Rich, Ms. Rich states that "Judicial Watch's repeated references to
5 unsubstantiated speculation concerning a 'bribery scheme' are irrelevant to whether the Act was
6 violated because the alleged 'bribery' was not purported to have been for the purpose of
7 influencing an election for federal office."⁵ Response at 2. In regard to the furniture, Ms. Rich
8 contends that the gifts of two coffee tables and two chairs, valued at \$7,375, do not violate the
9 Act because they were not given for federal election purposes. According to Ms. Rich, she gave
10 the gifts to the Clintons to welcome them and celebrate the Clintons' move to their new home in
11 Westchester County, New York.

12 **2. Senator Clinton's Alleged Involvement in Clemency Grants**

13 **(a) New Square, New York Residents**

14 The complaint also alleges that then-candidate Hillary Clinton received an illegal quid
15 pro quo when she received 99% of the community's vote after she promised to support clemency

According to these disclosure forms, Ms. Rich contributed \$70,000 to New York Senate 2000 Non-Federal Account during 2000.

⁵ Ms. Rich further states that "in a blatant effort to prejudice the Commission, Judicial Watch repeatedly points to Ms. Rich's invocation of her Constitutional rights before Congress" and requests that the Commission draw an adverse inference that would be totally improper. Response at 2-3. Citing *Fujisawa Pharmaceutical Co. v. Kapoor*, 1999 WL 543166 (N.D. Ill. 1999) (defendant Kapoor successfully moved to have evidence concerning his invocation of his Fifth Amendment privilege before a congressional subcommittee excluded), Ms. Rich asserts that her invocation of her Fifth Amendment privilege should not serve as a basis for the Commission to draw an adverse inference against her because she invoked the privilege before Congress. *Id.* As noted earlier, Judicial Watch argues that the Commission also should draw an adverse inference against Senator Clinton based on Ms. Rich's invocation of her Fifth Amendment privilege under an agency/employee theory. Complaint at 3. Because the adverse inference arguments relate to the allegation that there was an exchange of monetary contributions and gifts for a pardon, a bribery allegation that is not within the Commission's jurisdiction, *see infra* p. 9 and 18 U.S.C. § 201, the issue of whether to draw adverse inferences against Ms. Rich and Senator Clinton does not need to be decided by the Commission.

1 for four men from the Hasidic community of New Square, Rockland County, New York.
2 According to the complaint, Hasidic communities in New York other than the "New Square"
3 community overwhelmingly supported Republican Senatorial candidate Rick Lazio. The
4 complaint notes that the clemency grants were for four individuals who were convicted of
5 cheating the federal government of approximately \$40 million dollars in student aid grants for
6 the needy. According to the complaint, the evidence demonstrates that "Senator Clinton was the
7 only U.S. Senator involved in the pardon process, receiving financial and other remuneration
8 from the petitioners and/or their agents." Complaint at 5.

9 Respondents Senator Clinton, the Hillary Rodham Clinton for US Senate Committee,
10 Inc. and former President William J. Clinton do not specifically address this allegation except for
11 their general statement that "[t]here is no conceivable way to convert Mr. Fitton's pardon-
12 theories to a violation of the Act." Joint Response at 2. No response was received from Rabbi
13 Twersky, one of the individuals who allegedly urged the President to commute the fraud
14 sentences of the four men.

15 (b) Hugh and Anthony Rodham

16 The complaint alleges that Hillary Clinton may have received a portion of the
17 \$100,000 that Hugh Rodham received for his efforts to obtain a pardon for Glen Braswell,
18 who had been convicted of tax fraud, and a sentence commutation for Carlos Vignali, who had
19 been serving a fifteen-year sentence for the distribution of illegal narcotics.⁶ In his response,
20 Hugh Rodham contends that the complaint at issue was directed against Senator Clinton not

⁶ Hugh Rodham's attorney had originally asserted that Mr. Rodham had returned all of the money but later stated that Mr. Rodham had returned only \$300,000 of the \$400,000. Brian Blomquist, *Owe Brother! Hugh Still Hasn't Paid Up*, N.Y. POST, March 16, 2001 at 24: According to his attorney, Mr. Rodham had spent some of the

1 against him. He also asserts that the complaint, even if true, does not allege a violation of any
2 statute or regulation within the Commission's jurisdiction.

3 The complaint also alleges that Anthony Rodham was involved in the pardon process
4 "scandal" and refers to a CNN news article entitled "Tony Rodham says he talked to Clinton
5 about pardon" that was attached to the complaint. The article quotes Anthony Rodham as
6 acknowledging that he spoke to former President Clinton about granting a pardon to Edgar Allen
7 Gregory and Jo Gregory, for whom he worked as a consultant. The Gregorys, who had been
8 convicted of bank fraud, were pardoned by former President Clinton. The Commission did not
9 receive a response to the complaint from Anthony Rodham.⁷ Again, respondents Senator
10 Clinton, the Hillary Rodham Clinton for US Senate Committee, Inc. and former President
11 William J. Clinton do not specifically address these allegations except for their general statement
12 that "[t]here is no conceivable way to convert Mr. Fitton's pardon-theories to a violation of the
13 Act." Joint Response at 2.

14 C. Analysis

15 With respect to the allegations that Denise Rich made excessive contributions to Senator
16 Clinton, it appears that Ms. Rich contributed \$2,000 to the Hillary Rodham Clinton for US
17 Senate Committee, Inc., \$1,000 for the primary on October 7, 1999 and \$1,000 for the general on
18 August 5, 1999 and \$70,000 to the Non-Federal Account of New York Senate 2000. Ms. Rich's
19 contributions to the Non-Federal Account of New York Senate 2000 were not subject to the

money that he received; the attorney said that she did not know when Mr. Rodham would be able to return the remaining funds. *Id.*

⁷ The complaint notification letter sent to Anthony Rodham was returned by the post office as undeliverable. This Office resent the notification letter to a local address in Washington, DC; however, the notification letter was again returned as undeliverable.

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1 contribution limitations of the Act and her contributions to the Hillary Rodham Clinton for US
2 Senate Committee, Inc. did not exceed the Act's contribution limits. See 2 U.S.C.
3 § 441a(a)(1)(A). Additionally, the complaint provided no evidence that the two coffee tables and
4 two chairs given to the Clintons by Ms. Rich were used in connection with Hillary Clinton's
5 senatorial campaign. Therefore, the furniture given by Ms. Rich falls under the jurisdiction of
6 the United States Office of Government Ethics. Consequently, it appears that Ms. Rich did not
7 exceed the contribution limits set forth in Section 441a(a) in regard to her monetary contributions
8 and gifts of furniture.

9 The allegations that respondents Senator Clinton, former President Clinton, Denise Rich,
10 Hugh Rodham, Anthony Rodham and Rabbi Twersky were involved in exchanging money
11 and/or political support for pardons or sentence commutations are bribery allegations which are
12 not within the Commission's jurisdiction.⁸ 18 U.S.C. § 201.

13 Judicial Watch also argues that the pardons or clemency grants that were allegedly either
14 sold to a contributor or made in exchange for election support or financial benefit to candidate
15 Hillary Clinton constitute reportable contribution "offsets." In the current complaint, Judicial
16 Watch cites MUR 4449 as Commission precedent to support its "offset" argument. However,
17 Judicial Watch did not raise an "offset" argument before the Commission in MUR 4449, which
18 the Commission exercised its prosecutorial discretion to close as "stale" on

⁸ Section 201 of Title 18, a criminal statute, provides that public officials who accept bribes, and individuals who bribe public officials, may be imprisoned and/or fined. Therefore, the bribery allegations made in the complaint filed in this matter fall under the jurisdiction of the Department of Justice ("DOJ") not the Commission.

According to a June 2002, newspaper article, DOJ announced that no charges would be filed in the clemency case of four residents of New Square, New York. Dale Russakoff, *Clinton Cleared in New Square Pardon Case; U.S. Attorney in New York Probing Other Pardons*, THE WASHINGTON POST, June 21, 2002. The article made no reference to a conclusion of the DOJ investigation of the Marc Rich pardon; however, the article stated that the investigations into several other pardons would continue. No recent press articles that address the status of the DOJ investigation of the Marc Rich pardon have been located by this Office.

23-04-406-2271

December 2, 1997.⁹ Judicial Watch presumably refers to the arguments it made for the first time to the U.S. District Court for the District of Columbia in *Judicial Watch v. FEC*, 10 F. Supp. 2d 39 (D.D.C. 1998), its suit pursuant to 2 U.S.C. § 437g(a)(8) stemming from MUR 4449. However, the district court's opinion remanding the "offset" argument to the Commission was reversed. *Judicial Watch v. FEC*, 180 F.3d 277 (D.C. Cir. 1999).

The Commission did consider a similar argument in MURs 5194/5206, yet additional Judicial Watch complaints. In those matters, Judicial Watch alleged that the National Republican Congressional Committee ("NRCC") and the National Republican Senatorial Committee ("NRSC") sold "access" to Federal officeholders in violation of 18 U.S.C. § 201, which prohibits bribery, and 18 U.S.C. § 600, which prohibits the provision of employment or any Federal benefit to any person in exchange for political activity, statutes that are within the jurisdiction of the Department of Justice not the Commission. The complaints in those matters also alleged that the committees violated 2 U.S.C. § 434 by failing to report the value of access to each contributor as an "offset" to the contributor's contribution.

As discussed in detail in the First General Counsel's Report in MURs 5194/5206, the Commission has in the past interpreted the contribution-offset requirements of 2 U.S.C. § 434(b)(4)(F) and (5)(E) in a straightforward manner. See First General Counsel's Report in MURs 5194/5206 dated December 6, 2001 at pages 10-14. As described in more detail in that report, Judicial Watch's "offset reporting" theory is both bad law and bad accounting because it "could not be implemented without doing violence either to the 'balance sheet' reporting scheme of 2 U.S.C. § 434(b) or the 'full purchase price [of an item sold as a fundraising premium] is a

⁹ The complaint in MUR 4449 alleged that seats on Department of Commerce trade missions were sold in exchange for campaign contributions to the Democratic National Committee ("DNC").

1 contribution' rule of 11 C.F.R. § 100.7(a)(2)." *Id.* at 12-13. In MURs 5194/5206, the value of
2 "access" to Bush Administration officials through fundraising activities could not be described as
3 an "offset to contributions." In those matters, the Commission found no reason to believe that
4 the NRCC and NRSC violated 2 U.S.C. § 434(b) for failing to report the value of the access to
5 each contributor as an "offset" to the contributor's contribution.¹⁰ For the same reasons, the
6 value of pardons or grants of clemency allegedly sold to a contributor or made in exchange for
7 financial benefit or election support -- not that the complainants provided any evidence that such
8 transactions occurred here -- cannot be an "offset" to contributions. Hence, the contribution-
9 offset reporting requirements set forth in 2 U.S.C. § 434(b) do not apply to the Hillary Rodham
10 Clinton for US Senate Committee, Inc. because no reportable "offsets to contributions" occurred.

11 Based on the foregoing, this Office recommends that the Commission find no reason to
12 believe that William Jefferson Clinton, Anthony Rodham, Hugh Rodham and Rabbi David
13 Twersky violated any provision of the Act in connection with this matter. This Office also
14 recommends that the Commission find no reason to believe Denise Rich made excessive
15 contributions in violation of 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(3) or that Senator Clinton or
16 the Hillary Rodham Clinton for US Senate Committee, Inc. accepted contributions that exceeded
17 contribution limits in violation of 2 U.S.C. § 441a(f). This Office also recommends that the
18 Commission find no reason to believe that the Hillary Rodham Clinton for US Senate
19 Committee, Inc. and Harold Ickes, as Treasurer, violated 2 U.S.C. § 434(b).

20

¹⁰ The Commission also found no reason to believe that the other respondents involved violated any provision of the Act in connection with these matters. On December 11, 2001, the Commission closed the file. Judicial Watch then filed a 437g(a)(8) suit because of the dismissal and the matter is currently pending before the D.C. District Court.

III. RECOMMENDATIONS

1. Find no reason to believe William Jefferson Clinton violated any provision of the Act in connection with this matter.
2. Find no reason to believe Anthony Rodham violated any provision of the Act in connection with this matter.
3. Find no reason to believe Hugh Rodham violated any provision of the Act in connection with this matter.
4. Find no reason to believe Rabbi David Twersky violated any provision of the Act in connection with this matter.
5. Find no reason to believe that Hillary Rodham Clinton or the Hillary Rodham Clinton for US Senate Committee, Inc. and Harold Ickes, as Treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b).
6. Find no reason to believe that Denise Rich violated 2 U.S.C. §§ 441a(a)(1)(A) or 441a(a)(3).
7. Close the file and approve the appropriate letters.

Lawrence H. Norton
General Counsel

12/10/03
Date

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