



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of

Democratic Senate Majority Fund, et al.

MUR 5343

STATEMENT FOR THE RECORD BY COMMISSIONER DAVID M. MASON

Although the Commission, by a 5-1 vote,¹ approved the recommendations contained in the First General Counsel's Report to exercise its prosecutorial discretion and to close the file in this matter, I write to comment on the analysis offered in the report regarding Federal officeholder fundraising. See First General Counsel's Report in MUR 5343 dated January 15, 2004 ("FGCR") at 12-13.

The report thoroughly analyzes the factors that the Commission examines in considering whether organizations such as the Democratic Senate Majority Fund ("DSMF") are directly or indirectly established, financed, maintained, or controlled by a national party committee, and thus prohibited from raising or spending non-Federal funds. See FGCR at 10 (applying the non-exclusive factors at 11 CFR 300.2(c)(2)(i) through (x); 2 USC 441i(a)(2). The analysis then leads to the question of whether DSMF is established, financed, maintained, or controlled by virtue of the Democratic Senatorial Campaign Committee's ("DSCC") support of DSMF's Federal fundraising efforts. The report concludes that because Federal officeholders are permitted with various conditions to raise funds for political committees, that officeholder fundraising, in itself, is not a basis for concluding that an organization is financed by those officeholders.²

While Federal officeholder solicitations or appearances at fundraisers clearly are permissible within the limits of 441i(e), evidence that an officeholder or group of officeholders is responsible for raising substantial portions of an organization's funds could be considered

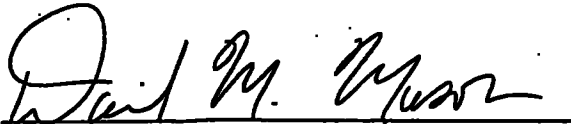
¹ After considering the matter in executive session on February 4, 2004, the tally vote was revised to reflect Chairman Smith, Vice-Chair Weintraub, Commissioners Mason, McDonald, and Thomas voting affirmatively and Commissioner Toner voting against.

² The DSCC is a national party committee, so the exception in 2 USC 441i(e)(3) allowing Federal officeholders and candidates to attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party, is not applicable.

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evidence of "financing" of the organization by the officeholder(s). This analysis does not rely on a specific threshold, but is applied like others in our "established, financed, maintained, or controlled" analysis in the context of the overall relationship between the officeholder(s) and the organization. For instance, regarding the same organization, the FGCR considers the fact that there is a 70% overlap between donors to this group and donors to the DSCC, but concludes in the particular circumstances here that this overlap does not conclusively show common control and is not worthy of further investigation. See FGCR at 11-13. In other circumstances (perhaps an organization with a longer track record) I might consider 70% donor overlap sufficient to merit further inquiry. Officeholder fundraising should be analyzed similarly. Therefore, while solicitations or appearances at fundraisers by Federal officeholders and candidates are generally permissible, with implications and restrictions not important here, evidence that an officeholder or group of officeholders is responsible for raising substantial portions of a political committee's funds could be considered evidence of "financing." This determination would have to be made on a case-by-case basis, much like the application of the other factors in the Commission's analysis of whether an entity is "established, financed, maintained, or controlled."

February 10, 2004



David M. Mason
Commissioner

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