FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Request of James Mangia to Deny Certification of Public Funds to Patrick J. Buchanan and Ezola Foster	)))	**LRA #598**
Request of New York Delegation to Deny Certification of Public Funds to Patrick J. Buchanan and Ezola Foster	)))	**LRA #599**

STATEMENT FOR THE RECORD

VICE CHAIRMAN DANNY L. McDONALD; COMMISSIONER SCOTT E. THOMAS; AND COMMISSIONER BRADLEY A. SMITH

The Commission has issued Statements of Reasons for denying two requests to deny certification of public funds to Patrick J. Buchanan and Ezola Foster.[1] Although we have voted for the Statements of Reasons, we write separately to express the reservations we have for the substantive portions of these Statements, and to address the concern of our colleagues that these requests were not properly before the Commission.

1. Procedural Argument: Submission not Properly Before the Commission

Some of our colleagues believe the requests of Mr. Mangia and the New York Delegation are not properly before the Commission, as the Commission has no formal procedure for recognizing such submissions. It is true neither the Act nor Commission regulations provide a specific procedure to contest an application for public funds. Nevertheless, the Commission has acted on such applications in the past, issuing

[1] Statement of Reasons, Request by Mr. James Mangia to Deny Certification of Public Funds to Patrick J. Buchanan and Ezola Foster, LRA #598; Statement of Reasons, Request by the New York Delegation to Deny Certification of Public Funds to Patrick J. Buchanan and Ezola Foster, LRA #599. As the reasoning is the same in the Statements of Reasons denying both submissions, we will treat the Statements as being a singular "Statement," and refer to the page cites as they appear in the Statement of Reasons for LRA #598.

statements of reasons to explain our decisions. There may be times when the Commission ought to hear such allegations from knowledgeable third parties in determining whether or not a basis exists for the Commission to deny an application for public funds. It is difficult to believe the Commission would ignore widely-reported fraud that would disqualify a candidate. If the agency would not ignore such allegations as they might appear in the press, we see no reason to ignore them because they are placed in a written submission addressed to the Commission.

In our view, the most logical way to treat such submissions, when timely submitted (that is, when submitted before the ruling of the Commission) would be as comments on the application.[2] The fact that 26 U.S.C. §9005(a) allows 10 days for the Commission to consider an application for public funds suggests to us that our responsibility is more than purely ministerial, so that a formal process to accept such comments would not be contrary to the statute.

We would like to consider formalizing a process for such comments through rule-making. At the present time, however, in light of the Commission's history of accepting such comments and issuing statements of reasons in response, we think it inappropriate simply to deny the petitions on those procedural grounds, without discussing the substance of the complaints.

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[2] Commissioner Smith is of the opinion that the submissions of Mr. Mangia and the New York Delegation ought not be treated as petitions requiring a formal denial, but rather, as comments on the application of Mr. Buchanan and Ms. Foster.

2. Substantive Arguments to Deny Requests

The substantive rationale for denying the requests can be captured in a single sentence included in each Statement of Reasons:

> As Mr. Buchanan and Ms. Foster have submitted documentation demonstrating that they have qualified to appear on numerous general election ballots as Reform Party candidates, they meet the Fund Act's definition of 'candidate,' and the Reform Party, under whose designation they run, meets the definition of 'political party.'[3]

It is true that Mr. Buchanan and Ms. Foster are "candidates" under the Fund Act, as they are on the ballot in ten states under the Reform Party banner. And it is also true that the Reform Party is a political party, formally recognized by the Commission.[4] We have joined this part of the Statement of Reasons on the understanding that we are saying we have no reason to doubt the Reform Party, as formally recognized, nominated Mr. Buchanan and Ms. Foster for President and Vice President for the 2000 election cycle. At the same time, however, some might read the Statement of Reasons to say that a quest for funds, in a situation in which two candidates each claim to be the proper nominee of a party and the just recipient of public funds, is a mere race to the states for ballot access certification, and then to this Commission for automatic certification for public funds. As this is not our understanding, we wish to clarify our view of the Commission's obligations in certifying general election funds under the Presidential Election Campaign Fund Act.[5]

The Statement of Reasons notes that "[t]he Fund Act's definition of 'candidate' explicitly requires the Commission to rely on the states' determinations of who appears

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[3] Statement of Reasons, at 11.

[4] On November 22, 1999, the Commission certified $2,468,291 to the Reform Party 2000 Convention Committee. Subsequent to this certification, party unrest led to a conflict over the convention funds. On April 3, 2000, United States Judge Norman K. Moon issued an order awarding the Reform Party's convention funds to a group headed by Convention Chair/Treasurer Gerald Moan. *See Reform Party of the United States v. Gargan*, 89 F. Supp. 2d 751 (W.D. Va. 2000).

[5] 26 U.S.C. §9001, *et seq.*

on the general election ballot."[6] We have no quarrel with this statement as far as it goes. But our reliance upon state determinations of ballot appearance satisfies only a threshold condition. We take the requirement of 26 U.S.C. §9002(2)(B), that one appears on the ballot in ten or more states in order to meet the definition of candidate, as a necessary, but not sufficient, requirement to obtain funds. We believe this requirement serves to prevent a waste of federal taxpayer resources on truly fringe contenders. The five percent rule serves as an indicator of past support. The ten-state ballot requirement serves as an added, present-day indicator of popular or party support, and indicates that the funds will be used to support a presidential campaign. Meeting this criterion is necessary to qualify as a candidate, but is not sufficient to qualify for public funds.

The Fund Act awards funds not simply to candidates but to "eligible" candidates.[7] And there are only three general types of eligible candidates under the Fund Act.[8] Mr. Buchanan applies to this Commission not as a major party candidate, nor as a candidate who in his own name received more than 5% of the popular vote in 1996, but rather as the "candidate[] of a minor ... party."[9] But the term "minor party" does not mean any party other than Republican and Democrat. Under the Fund Act, the term 'minor party' means "a *political party whose candidate* ... in the preceding presidential election received, *as the candidate of such party*," at least 5 percent but no more than 25 percent

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[6] Statement of Reasons at 11.

[7] *See generally*, 26 U.S.C. §§9002(4), 9003, 9004(a), and 9006.

[8] The Entitlement portion of the Fund Act contemplates awarding funds to three broad categories of applicants: eligible major party candidates, eligible minor party or new party candidates, and candidates "treated as eligible" by virtue of the percentage of popular vote he or she garnered in the previous election. 26 U.S.C. §§ 9004(a)(1); 9004(a)(2)(A); 9004(a)(2)(B); and 9004(a)(3). Not being 2000 presidential candidates of major parties, Messrs. Hagelin and Buchanan have available the latter two methods of becoming eligible, or treated as eligible for funds. One method requires that an applicant be on the ballot in 10 states in this election, and the applicant himself obtained between 5% and 25% percent of the popular vote in the last election, whether as an independent or as the nominee of one or more non-major parties in that last election. 26 U.S.C 9004(a)(2)(B). In the 1996 general presidential election, Mr. Hagelin was listed on the ballot in many states as the nominee of the Natural Law Party, but garnered less than one percent of the popular vote, thus failing to be "treated as eligible" for matching funds in the 2000 election, under 26 U.S.C. §9004(a)(2)(B). The other method of is the one relevant to this proceeding. It requires either Mr. Buchanan or Mr. Hagelin to be the eligible candidate of a "minor party," that is, a party which received more than five but less than 25 percent of the vote in the 1996 election. 26 U.S.C. §§9003(c); 9004(a)(2)(A).

[9] 26 U.S.C. §9003(c).

of the popular vote.[10] This requires at least some determination on our part that the party whose nomination is claimed is, in fact, the party that garnered five percent or more of the vote in the last election.

State ballot access laws are not suited, and in our opinion were not intended by either Congress in passing the Act, or the states in passing their laws, to serve this function. Many states provide no role for party organizations to determine their own nominees for the general election ballot – yet the Act requires us to award funds to the nominee by virtue of his nomination by the party, not merely his independent effort to gather signatures for ballot access. Many states place no limit on the use of a party name so long as it is not already in use. Thus, it would be possible for a party to disband, and for a very different group to appear on the ballot four years later under the same name. The states do not concern themselves with such developments. Thus, recognition by ten states that a candidate is on the ballot under a particular name cannot satisfy the criterion that he be the nominee of the same party that won at least five percent in the last election. In this respect, our analysis is similar to that of Commissioner Sandstrom. We must make some assessment of party history. Our difference with Commissioner Sandstrom is that he seems to view this determination as requiring a far more exhaustive review of party affairs than we do,[11] and he would want a court, rather than the Commission, to take this responsibility.[12]

The Statement of Reasons correctly notes that "[t]he Commission should not entangle itself in the complexities of party rules or procedures *as the Fund Act does not define eligibility in terms of a political party's actions.*"[13] We agree. But to be the eligible candidate of a minor party, one must have been nominated by that party, and in

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[10] 26 U.S.C. §9002(7).

[11] *See* "Memorandum: 2000 General Election Entitlement - Reform Party," Commissioner Karl J. Sandstrom, at 6-9. ("What determines who the valid nominee of the Reform Party is? The party does. And by 'party,' I do not mean the inquiry stops with what the party officers say. ... The answer depends on the rules that were created to govern the Reform Party.")

[12] Sandstrom Memorandum, *supra*, at 7. ("A court is better suited to resolve the dispute over which individual is the valid nominee of the Reform Party.") (emphasis subtracted).

[13] Statement of Reasons at 10 (emphasis added).

that limited sense – and that sense only - the Commission must "define eligibility in terms of the political party's actions." In this matter, we have before us no substantial reason to doubt that the qualifying Reform party nominated Mr. Buchanan and Ms. Foster. The only reasons to question Mr. Buchanan's *bona fides* as the party nominee are the challenges to his application, and, as is clear, the violations here alleged are insufficient to deny certification.

The Statement of Reasons characterizes both petitions to deny certification as insubstantial because they merely "relate to events of competing factions of the Reform Party and raise questions regarding which faction is the 'true' Reform Party."[14] The Statement of Reasons responds to the petitioners that this Commission does not pick "true" factions of parties, as the "Commission's regulations indicate that a 'political party' is an association that nominates or selects an individual ... whose name appears on the general ballot as the candidate for that association."[15] While we agree it is not for us to inquire into the "true" goals of the Reform Party, the Statement of Reasons strikes us as incomplete.[16] It would provide no guidance, other than a race to the Commission, where competing candidates, each on the ballots of ten states and both purporting to be the nominee of the same party, were to apply to the Commission for the same general election funds. We acknowledge that this concern is somewhat hypothetical given that Mr. Hagelin did not appear to have met the ten-state requirement in the first place. But had he done so, the need to trace a nominee from the convention formally recognized and partially funded by this Commission would have been compelling. We believe, therefore, that while the Commission need not pick the "true" goals for the political parties, it must track which faction is properly tied to the successful results in the previous election --

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[14] *Id.*

[15] The exact language of the retort was as follows: "However, the Commission's regulations indicate that a 'political party' is an association that nominates or selects an individual for federal office whose name appears on the general election ballot as the candidate for that association. 11 C.F.R. §9002.15."

[16] Indeed, John Hagelin and Nat Goldhaber too claim to have been nominated by the Reform Party. *See* Statement of Reasons, Mangia's Sworn Supplement, Attachment 2, at 1-2 ("Since the filing of my Original Sworn Statement ... I have become the duly-elected National Party Chair of the Reform Party of the United States of America. In addition, the Reform Party ... has elected John Hagelin ... and Nat Goldhaber as its candidate[s].")

here, the Reform Party results in the 1996 election. On November 22, 1999, the Commission certified $2,468,291 to the Reform Party 2000 Convention Committee. Subsequent to this certification, party unrest led to a conflict over the convention funds, and, on April 3, 2000, United States Judge Norman K. Moon issued an order awarding those funds to a group headed by Convention Chair and Treasurer Gerald Moan.[17]

In looking to whom the Reform Party nominated at their convention, the proper standard for us to follow is that of the Minnesota Supreme Court in *Democrat Farm Labor State Central Committee v. Holm*.[18] Faced with a similar battle over party rules and delegate credentials, the Court, quoting the North Dakota Supreme Court in *State v. Lavik*[19], noted: "It is not our province to correct parliamentary errors ... ."[20] Rather, the court relied on the rulings made, "whether rightly" or wrongly, of the party chair and committees.[21] Following this standard, we are not required to arbitrate among candidates or interpret party rules and by-laws. In recognizing the Party as a private entity, we do not concern ourselves with whether or not Mr. Buchanan was nominated in strict accordance with party rules.[22] Our only concern is whether or not he is the nominee of the party. Under this standard, there is no difficulty in tracing the Buchanan and Foster nominations to those results, for the relevant facts are undisputed. The challenges themselves[23] agree that on August 8, 2000, a meeting of the Reform Party National Committee was properly convened in Long Beach. It was presided over by the party's

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[17] *See Reform Party of the United States v. Gargan*, 89 F. Supp. 2d 751 (W.D. Va. 2000).

[18] 227 Minn. 52; 33 N.W.2d 831 (Minn. 1948).

[19] *State, ex rel. Hans Fosser v. Andrew J. Lavik*, 9 N.D. 461; 83 N.W. 914 (N.D. 1900).

[20] *Democrat Farm-Labor v. Holm*, 227 Minn. 52, at 58; 33 N.W.2d 831 at 834 (Minn. 1948); *quoting, State v. Lavik*, 9 N.D. 461 at 462; 83 N.W. 914 at 915 (N.D. 1900).

[21] *Democrat Farm-Labor, supra* note 18, at 58; *quoting Lavik, supra* note 18, at 462.

[22] *See generally, Cousins v. Wigoda*, 419 U.S. 477 at 496 (1975). (A state cannot compel a national political convention to seat delegates against its will); *Democratic Party of the United States v. Wisconsin, ex rel. LaFollette*, 450 U.S. 107 at 126 (1981).

[23] Statement of Reasons, Sworn Statement of Mangia, Attachment 1, at 9.

Vice-Chair and Acting Chairman, Gerry Moan.[24] That too seems to be undisputed. What is also undisputed is that certain members of the party, including the petitioners, were unhappy with rulings made by the Party Chairman. Believing these rulings violated party rules, but outvoted at the meeting, they walked out of the convention.[25] But a majority of those who had come for the National Committee meeting stayed and continued on with party affairs. A majority held the convention, attended and chaired by the person in charge of the Convention Committee we had previously certified for convention funding. This convention nominated Patrick J. Buchanan and Ezola Foster for President and Vice President, respectively.

In our view, the statements of Mr. Mangia and other challengers make clear that Mr. Buchanan was nominated by the Reform Party whose nominees are entitled to public funds for the general election. Because Mr. Buchanan and Ms. Foster are on the ballot in ten states, were nominated at the Reform Convention formally recognized and partially funded by this Commission, and have met the other requirements of eligibility under 26 U.S.C. §9003 of the Fund Act, there is no just reason to deny a certification of funds to Patrick J. Buchanan and Ezola Foster.

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[24] *Id.*

[25] Statement of Reasons, Sworn Statement of Mangia, Attachment 1 at 11.

Finally, it is not inappropriate to briefly address other concerns that have been raised in various comments on the application of Buchanan and Foster. Notably, several commenters have argued, essentially, that we should deny certification of funds to the Buchanan campaign because they consider Buchanan a bad man with unworthy views. In one commenter's words, we should consider that Buchanan's campaign is "built on hatred and destruction," and that public funds going to Buchanan will find their way into the "pockets of people who support bigotry, hatred, and even violence against other Americans."[26] Leaving aside the merits, or lack thereof, to this charge, the Fund Act does not allow discretion to deny certification of funds on the basis of the applicant's political beliefs.

10/18/00
Date

Danny L. McDonald
Vice-Chairman

10/18/00
Date

Scott E. Thomas
Commissioner

10/18/00
Date

Bradley A. Smith
Commissioner

[26] Letter of Donna Donovan, September 9, 2000, submitted *ex parte* and on file with the Commission.