



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) ADR 592
)
 Committee to Re-Elect Gary Jensen,)
 Mayor of Ferndale)
 Fleetwood International Development)
 Corporation)

**STATEMENT OF REASONS
OF VICE CHAIR ELLEN L. WEINTRAUB AND
COMMISSIONERS CYNTHIA L. BAUERLY AND STEVEN T. WALTHER**

In this matter, the complaint alleged that the Committee to Re-Elect Gary Jensen accepted an impermissible \$700 contribution from Fleetwood International Development Corporation, a foreign corporation. The proposed Alternative Dispute Resolution ("ADR") settlement agreement required the committee to refund the prohibited contribution and the foreign corporation to implement and circulate a corporate policy on contributions to Federal, state, and local candidates. The proposed settlement did not include payment of a civil penalty. To agree to a settlement in this matter without payment of any civil penalty would suggest that the Commission does not take this type of violation seriously.

Foreign nationals are prohibited from making contributions in connection with any Federal, state or local election. 2 U.S.C. § 441e(a). Congress has repeatedly found that foreign nationals have attempted to influence Federal and state elections in the United States.¹ These findings have resulted in increasingly robust statutory prohibitions to prevent foreign influence

¹ See *Activities of Nondiplomatic Representatives of Foreign Principals in the United States: Hearings Before the Senate Comm. on Foreign Relations, 88th Cong. (1963)* (finding that agents of foreign principals with ties to the sugar industry in the Philippines made contributions to at least twenty Members of Congress); Morton Mintz, *Hill Action Asked on Overseas Gifts*, Wash. Post, May 25, 1973, at A29 (reporting that the Nixon campaign received contributions from a "Canadian oil magnate" at a time when changes to the United States quotas on Canadian oil imports were under discussion); S. Rep. No. 105-167 at 781-2710 (majority report on foreign influence), 4619-5925 (minority report on same) (finding that the government of China may have spent millions of dollars influencing various Federal and state elections in 1996).

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over American elections.² In fact, in 2002, Congress went so far as to dedicate an entire section of the campaign finance law – section 441e – to the prohibition against contributions by foreign nationals. Section 441e expanded the statute's scope by explicitly prohibiting foreign nationals from disbursing funds in connection with Federal, state, and local elections³ and directing the United States Sentencing Commission to increase the criminal penalties for illegal conduct involving foreign contributions. This statutory prohibition was recently upheld by a three-judge panel of the United States District Court for the District of Columbia and that decision was affirmed by the Supreme Court.⁴ The Commission's enforcement of this prohibition therefore must reflect the importance placed upon it both by Congress and the courts.

The terms of the proposed settlement agreement in this matter were insufficient to vindicate the important interest of preventing foreign influence over our electoral process. In light of that important government interest, we could not agree to resolve this matter without payment of a civil penalty.

Unfortunately, it is a quirk of the Commission's current ADR program that there is no provision enabling the Commission to revise or amend the proposed settlements.⁵ Unlike matters handled by the Office of General Counsel, the absence of four votes to approve a proposed settlement agreement in the Commission's ADR program has the consequence of an automatic dismissal. We were thus faced with the choice of either approving a settlement agreement without meaningful terms or withholding our votes of approval, which would result in automatic dismissal of the matter. Given the interest at stake here, we chose dismissal of the matter rather than accept a settlement agreement that did not require payment of any meaningful civil penalty.⁶ Any other result could send a signal to would-be violators that the Commission takes such a violation lightly.

We take the position that any violation of 2 U.S.C. § 441e(a) should be met with meaningful consequences. We hope our colleagues will join with us in amending the Commission's ADR procedure so that the ultimate decision on terms of settlement rests with the Commission – regardless of whether it is handled in the Commission's Office of General Counsel or Office of Alternate Dispute Resolution.

² Foreign Agents Registration Act Amendments of 1967, Pub. L. No. 89-486, 80 Stat. 248 (1966) (then-codified at 18 U.S.C. § 611 (1967)); FECA Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263, 1267; Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. No. 107-155, 116 Stat. 81, 96, 107 (codified at 2 U.S.C. § 441e(a)(1)(A)-(C)).

³ Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. No. 107-155, 116 Stat. 81, 96, 107 (codified at 2 U.S.C. § 441e(a)(1)(A)-(C)).

⁴ *Bluman v. FEC*, 800 F.Supp.2d 281 (D.D.C. 2011), *summarily affirmed* __ U.S. __, 2012 WL 33838 (Jan. 9, 2012).

⁵ The Commission instituted a pilot Alternative Dispute Resolution program in 2000 and made that program permanent in 2002. See generally www.fec.gov/em/adr.shtml and Guidebook for Complainants and Respondent on the FEC Enforcement Process, available at www.fec.gov/em/respondent_guide.pdf.

⁶ ADR 592 (Jensen) Certification, dated January 26, 2012.

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Finally, we note that the committee and the foreign corporation involved in this matter are now aware that the contribution was prohibited. Further, despite the absence of a settlement agreement, we expect that the committee will refund the impermissible contribution and that the corporation will voluntarily take appropriate steps to avoid any future violations.⁷

2/27/12
Date

Ellen L. Weintraub
Ellen L. Weintraub
Vice Chair

2/27/12
Date

Cynthia L. Bauerly
Cynthia L. Bauerly
Commissioner

2/27/12
Date

Steven T. Walther
Steven T. Walther
Commissioner

⁷ The Committee included in its response a copy of a \$700 refund check payable to the corporation.

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