



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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September 13, 2000

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Leslie Bright
Associate General Counsel

Gregory R. Baker
Special Assistant General Counsel

AGENDA ITEM
For Meeting of: 9-14-00
SUBMITTED LATE

SUBJECT: Requests to Deny Certification of Public Funds to Patrick J. Buchanan and Ezola Foster – Previous Challenges (LRA #598/599)

At its Special Open Session on September 12, 2000, the Commission preliminarily discussed the requests to deny certification of public funds to Patrick J. Buchanan and Ezola Foster. See Requests to Deny Certification of Public Funds to Patrick J. Buchanan and Ezola Foster (LRAs #598/599), Agenda Document No. 00-90. At the meeting, some Commissioners questioned the petitioners' standing and wanted to know what the Commission's precedent was for these type of proceedings. The requests were held over to the Thursday, September 14, 2000 Open Session. This Office has prepared the following memorandum to assist the Commission in its discussion of the requests and draft Statements of Reasons.

Unlike the eligibility and entitlement provisions of the Commission's regulations, there are no provisions regarding the procedures for challenges to the certification of public funds. Similarly, the Presidential Election Campaign Fund Act ("Fund Act") nor the Commission's regulations speak to issues of standing in these matters. Instead the Commission has relied on judicial opinions and past Commission precedent as a guide. Over the years, there have been numerous challenges to the certification of public funds.¹ Several of the challenges have been in

¹ Several funding challenges were filed in the 1992 and 1996 election cycles: (1) in 1992, the Commission on its own initiative, challenged Lyndon LaRouche's application for matching funds (approved February 27, 1992); (2) in 1992, the RNC filed a petition to deny certification of payments to Governor Bill Clinton (request denied June

the form of administrative complaints or petitions to deny the certification of public funds, and two of the challenges were internally generated (LaRouche in 1976 and 1992). This Office has consistently brought these matters before the Commission during the certification process.

The approach for addressing petitions and challenges is consistent with the concurring opinion of Judge Wald in *In re Carter-Mondale*, 642 F.2d 538 (D.C. Cir. 1980). In her concurring opinion, Judge Wald stated that the Fund Act conferred upon the Commission “both the discretion and the duty to examine the face of an administrative complaint charging violations of the Fund Act’s eligibility requirements before certifying a candidate for public funding.” *In re Carter-Mondale*, 642 F.2d at 548 (concurring opinion of Judge Wald). Judge Wald concluded that, in considering eligibility for public funding, “the Commission should have examined the administrative complaint and its accompanying materials, but such an examination would not have required the Commission to delay certification pending an investigation.” *Id.* at 553. Judge Wald’s concurring opinion was also cited in the Commission’s Statement of Reasons addressing the petition filed against then-Governor Bill Clinton. *See Statement of Reasons, Petition to Deny Certification of Matching Funds to Governor Bill Clinton*, approved June 25, 1992. Specifically, we noted Judge Wald’s observations regarding the “Commission’s obligation ‘to examine the face of the complaint and its accompanying materials before certifying the candidate’s eligibility.’” *Id.* at 8, citing *In re Carter-Mondale* at 551.

Since the *Carter-Mondale* decision, the Commission has addressed these issues in open session and only two of the Commission’s determinations were challenged in the D.C. Circuit. *See, e.g., LaRouche v. FEC*, 996 F.2d 1263 (D.C. Cir. 1993); *Boulter v. FEC*, No. 88-1541 (D.C. Cir., August 3, 1988). Although the court in *LaRouche* ruled that the Commission exceeded its statutory authority in withholding the public funds from Mr. LaRouche, since this matter was internally generated, the court did not address issues of standing or the propriety of the Commission reviewing petitions during the certification process. In *Boulter*, the court upheld the Commission’s decision to deny the RNC’s petition to deny certification of payments to Dukakis/Bentsen.

In light of the above, this Office recommends that the Commission consider the submissions and specifically reject the requests to deny certification of public funds to Patrick J. Buchanan and Ezola Foster. This recommendation is consistent with the Commission’s past practice and judicial precedent. In addition, this action would not preclude the Commission from challenging the petitioners standing in a court challenge.

25, 1992); (3) in 1996, Mr. Herb Rosenberg filed a petition to deny certification of public funds to H. Ross Perot (request denied October 17, 1996); (4) in 1996, the RNC filed a submission requesting that the Commission deny the certification of matching fund payments to President Bill Clinton (request denied September 12, 1996); and (5) the DNC filed a submission requesting that the Commission deny the certification of matching funds to Senator Robert Dole (request denied August 8, 1996).