

COPY



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 11, 1999

Mr. Michael J. McManus, Esq.  
Drinker, Biddle & Reath, LLP  
901 Fifteenth Street, NW, Suite 900  
Washington, D.C. 20005-2333

RE: MUR 4821  
Catherine Austin Fitts

Dear Mr. McManus:

On October 21, 1998, the Federal Election Commission notified your client of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against your client. See attached narrative. Accordingly, the Commission closed its file in this matter on June 10, 1999.

The confidentiality provisions of 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact Jennifer H. Boyt on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Andrew Turley".

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

Attachment  
Narrative

MUR 4821  
LAZIO FOR CONGRESS

Kenneth J. Herman, State Chair of the Ethics Committee of the Independence Party of New York, alleges that Lazio For Congress accepted \$209,982 in excessive contributions from 188 individuals and a partnership during the 1994, 1996 and 1998 election cycles. Mr. Lazio won the 1998 General election for New York's 2<sup>nd</sup> congressional district with 67% of the vote to John Bace's 30%.

In its response, Lazio For Congress denies that it received any excessive contributions, and asserts that the allegations arose from the complainant's misunderstanding of 2 U.S.C. § 441a(a) limits; specifically, that this provision permits individual contributions up to \$1,000 *per election*, which includes separate contributions for the primary election and general election, and not \$1,000 per year. Respondent, joined by 35 individual contributors who also filed responses, maintains that in nearly every case, the alleged excessive contributions represented separate contributions to the primary and general campaigns by the individuals involved, or contributions by a husband and wife using the same check. Some of the responses revealed minor reporting discrepancies or inadvertent minor excessive contributions, the total of which appears to be less than \$5,000.

Jack Essenberg, Chairman of the Independence Party of New York State Committee, also submitted a letter regarding this matter. He states that the complainant's use of Independence Party letterhead for filing the complaint was "...completely improper and unauthorized..." Mr. Essenberg further asserts that the Independence Party does not endorse Mr. Herman's complaint to the FEC.

Mr. Essenberg refers to Mr. Herman as "the Independence Party's candidate for New York's Second C.D.," though he did not file any reports and, according to internal database sources, did not appear on the 1998 ballot for either primary or general elections. Mr. Herman did run against Mr. Lazio in 1996, losing the General election by 33% to Lazio's 64%.

This matter is less significant relative to other matters pending before the Commission.