



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 5659
Democratic Party of Hawaii and)
Yuriko Sugimura, in her official)
Capacity as treasurer)

Statement for the Record

Commissioner Ellen L. Weintraub

On May 19, 2005, the Commission voted 5-1 to find reason to believe ("RTB"), *inter alia*, that individual contributors Colin Veitch and James Kometani violated 2 U.S.C. § 441a(a)(1)(C) by making excessive contributions to the Democratic Party of Hawaii but to take no further action and send admonishment letters. I objected to these two recommendations because I found the reason to believe findings unwarranted.

Colin Veitch and James Kometani each made two contributions totaling \$15,000. Each made permissible \$5,000 contributions, and then each wrote an additional check for \$10,000. Veitch's \$10,000 check was made out to the "Coordinated Campaign of the Democratic Party of Hawaii" for a fundraiser and Kometani's was simply made out to "Hawaii Democratic Party." The Democratic Party of Hawaii ("DPH") deposited these \$10,000 checks into its Federal account, rendering the amounts excessive. If the DPH had deposited the checks into a non-Federal account, the contributions would have been permissible.

The Office of General Counsel found that "[i]t is *likely* that these contributors may not have known that they were exceeding the contributions limits, because they may have intended that their respective \$10,000 contributions go the DPH's non-federal account. Therefore, [OGC recommended] that the Commission take no further action against these two contributors, but issue an admonishment letter as to each of them." GC Report at 4 (emphasis added).

If Mr. Veitch and Mr. Kometani wrote out facially lawful checks, which they intended for the DPH's non-Federal accounts, but the DPH deposited them into the wrong account, I fail to see how this is a violation by the contributors. Surely, this is a

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violation by the DPH, but not the individuals. It is not clear what Mr. Veitch and Mr. Kometani could or should have done to ensure that their checks were properly deposited.

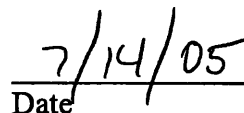
To add insult to injury, these two men had not been formally generated as "respondents." This means that Mr. Veitch and Mr. Kometani were not informed that there was a matter at the FEC pending against them. Unlike respondents in complaint-driven matters, who are informed of a complaint and given an opportunity to respond prior to any findings, these two gentlemen did not have the opportunity to respond. The first time they will hear from the FEC is when they receive their RTB findings and admonishment letters. This strikes me as patently unfair. The FEC, as a general rule, does not retract RTB findings, even if a respondent is later able to prove innocence. When RTB finds are made against an ungenerated respondent, and the file is closed, there is no opportunity to defend oneself.

It is no small matter to have a Government agency find that there is reason to believe one has violated the law. I oppose the Commission practice of making RTB findings against persons who have not been given the opportunity to answer the charges, particularly where the file is simultaneously closed so that there is never an opportunity to respond. It would require little additional effort on our part to provide that notice and opportunity to respond before we make reason to believe findings. As a matter of fundamental fairness, we should uniformly do so.



Ellen L. Weintraub

Commissioner


Date