



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Francisco "Quico" Canseco &
Randy Blair, Treasurer
Canseco for Congress
19 Jackson Court
San Antonio, TX 78230

MAR - 5 2015

RE: MUR 6919 (formerly AR 14-03)
Canseco for Congress and Randy
Blair in his official capacity as
treasurer
Francisco "Quico" Canseco

Dear Messrs. Canseco and Blair:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that Francisco "Quico" Canseco and his principal campaign committee, Canseco for Congress and Randy Blair in his official capacity as treasurer (the "Committee"), violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On March 3, 2015, the Commission found reason to believe that Francisco Canseco and the Committee violated 52 U.S.C. § 30121 (formerly 2 U.S.C. § 441e) and 52 U.S.C. § 30116(f) (formerly 2 U.S.C. § 441a(f)), and that the Committee violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) (formerly 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A)), unless you notify the Commission in writing that you wish the investigation to be made public.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law. Enclosed is a conciliation agreement for your consideration.

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If you are interested in engaging in pre-probable cause conciliation, please contact either Peter Reynolds or William Powers, the attorneys assigned to this matter, at (202) 694-1650 or (800) 424-9530, within five days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within a reasonable period. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

We look forward to your response.

On behalf of the Commission,



Chair
Ann M. Ravel

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Canseco for Congress and Randy Blair
in his official capacity as treasurer
Francisco Canseco

MUR 6919

I. INTRODUCTION

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This matter was generated from a Commission audit of Canseco for Congress ("Committee"), the principal campaign committee of Francisco Canseco, a 2010 House candidate in the 23rd Congressional District of Texas. On November 3, 2014, the Commission approved its Final Audit Report regarding the Committee's activity from January 1, 2009, through December 31, 2010 ("Audit Report").¹ The Audit Report included the following three findings that the Audit Division referred to the Office of the General Counsel ("OGC") for possible enforcement action: (1) the Committee received two prohibited foreign national contributions totaling \$100,000 from Inmuebles Caza, S.A. de C.V., ("Caza"), a corporation organized in Mexico; (2) the Committee received excessive contributions totaling \$170,343 from four individuals; and (3) the Committee misstated its financial activity for 2009 and 2010, and did not file amended disclosure reports.

OGC notified Respondents of the Referral and gave them an opportunity to respond, but they did not file a response with the Commission. Therefore, based on the discussion below and the analysis and findings set forth in the Audit Report, which is herein incorporated by reference, the Commission makes the following reason to believe findings:

¹ See Final Audit Report of the Commission on Canseco for Congress at 7 (January 1, 2009 – December 31, 2010), Attachment 1..

- Canseco for Congress and Randy Blair in his official capacity as treasurer (the “Committee”) violated 52 U.S.C. § 30121 (formerly 2 U.S.C. § 441e) by accepting a foreign national in the amount of \$100,000.²
- The Committee violated 52 U.S.C. § 30116(f) (formerly 2 U.S.C. § 441a(f)) by knowingly accepting excessive contributions in the amount of \$170,343.³
- The Committee violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)) by misstating its financial activity for calendar years 2009 and 2010.⁴
- Francisco Canseco violated 52 U.S.C. § 30121 (formerly 2 U.S.C. § 441e) by soliciting, accepting, or receiving a contribution by a foreign national.
- Francisco Canseco violated 52 U.S.C. § 30116(f) (formerly 2 U.S.C. § 441a(f)) by knowingly accepting excessive contributions.

II. FACTUAL AND LEGAL ANALYSIS

A. Foreign National Contributions

The Act and Commission regulations prohibit any person from knowingly soliciting, accepting, or receiving a contribution from a foreign national.⁵ For foreign national contributions, the Commission specifically defines “knowingly” as (i) having actual knowledge that the source of funds is a foreign national, (ii) being aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of funds is a foreign national, or (iii) being aware of facts that would lead a reasonable person to inquire whether the source of funds is a foreign national, and failing to conduct a reasonable inquiry.⁶

² See Audit Rpt. at 5-10.

³ See *id.* at 10-15.

⁴ See *id.* at 15-18.

⁵ 52 U.S.C. § 30121 (formerly 2 U.S.C. § 441e); 11 C.F.R. § 110.20(g).

⁶ 11 C.F.R. § 110.20(a)(4). As the Commission has explained, in addition to section 110.20(a)(4)(i), which established actual knowledge, sections 110.20(a)(4)(ii), (iii) establish two additional *mens rea* standards: a “‘reason to know’ standard under which a person should have acted as though a fact existed until it could be proven otherwise” or a “willful blindness, which is applicable to situations in which a known fact should have prompted a

1 On January 29, 2010, and April 13, 2010, the Committee accepted receipts in the
2 amounts of \$14,000 and \$86,000, respectively. The Committee asserts that these receipts were
3 loans from the personal funds of the candidate.⁷ The audit determined, however, that the source
4 of these funds was Caza, a foreign national corporation registered in Mexico.⁸ Therefore, the
5 Commission finds reason to believe that the Committee violated 52 U.S.C. § 30121 (formerly
6 2 U.S.C. § 441e) by accepting a prohibited contribution from a foreign national.

7 Further, Francisco Canseco accepted the two deposits from Caza before transferring them
8 to the Committee.⁹ Because Canseco is a partner in Canseco Investments, Ltd., which owns 99%
9 of Caza, he likely had actual knowledge that Caza is a foreign national corporation, but at the
10 least had "reason to know" the foreign nature of the funds.¹⁰ Therefore, the Commission finds
11 reason to believe Francisco Canseco violated 52 U.S.C. § 30121 (formerly 2 U.S.C. § 441e) by
12 knowingly accepting or receiving a contribution from a foreign national.

13 **B. Excessive Contributions**

14 The Act prohibits any person from making a contribution¹¹ to any candidate that exceeds
15 the limits of the Act (\$2,400 in 2010), and likewise prohibits any candidate or political

reasonable inquiry, but did not." See Explanation and Justification: Contributions and Limitations, 67 Fed. Reg. 69,928, 69,941 (Nov. 19, 2002).

⁷ Audit Rpt. at 8-10. The \$14,000 receipt was not disclosed on the Committee's reports, and the \$86,000 receipt was reported by the Committee as a loan from the personal funds of the candidate. *Id.* at 7.

⁸ See *id.* at 5-10.

⁹ Audit Rpt. at 7-8.

¹⁰ See 11 C.F.R. § 110.20(a)(4)(i),(ii).

¹¹ A contribution is any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 52 U.S.C. § 30101(8)(A)(i) (formerly 2 U.S.C. § 431(8)(A)(i)).

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1 committee from knowingly accepting such contribution.¹² The “knowing” acceptance of a
2 contribution requires knowledge of the underlying facts that constitute the prohibited act, but not
3 knowledge that the act itself — such as acceptance of an excessive contribution — is unlawful.¹³

4 The Audit Report concluded that the Committee received \$170,343 in excessive
5 contributions from four individuals.¹⁴ Though the Committee reported the contributions as loans
6 from the candidate’s personal funds, the audit concluded that the source of the funds was
7 personal loans from different individuals made directly to Francisco Canseco.¹⁵ The largest of
8 the four excessive contributions — \$147,600 — was made by Rod Lewis.

9 Based on this information, the Commission finds reason to believe that the Committee
10 and Francisco Canseco each violated 52 U.S.C. § 30116(f) (formerly 2 U.S.C. § 441a(f)) by
11 knowingly accepting an excessive contribution.

12 C. Misstatement of Financial Activity

13 The Act requires treasurers to file reports accurately disclosing the amount of cash-on-
14 hand at the beginning and end of each reporting period; the total amount of receipts for the
15 reporting period and for the calendar year; and the total amount of disbursements for the

¹² 52 U.S.C. § 30116(f) (formerly 2 U.S.C. § 441a(f)). 52 U.S.C. § 30116(f) (formerly 2 U.S.C. 441a(f)); see MUR 6417 (Jim Huffman for Senate) (candidate violated section 30116(f) (formerly section 441a(f)) by accepting funds from another source then transferring them to the Committee as “personal funds”); MUR 5408 (Sharpton 2004) (candidate violated section 30116(f) (formerly section 441a(f)) by accepting funds and using them for campaign activity).

¹³ See *FEC v. Dramesi*, 640 F. Supp. 985, 987 (D.N.J. 1986).

¹⁴ Audit Rpt. at 12. The excessive amount was derived from contributions of \$150,000, \$15,093, \$7,157, and \$7,693, minus the \$2,400 contribution limit for each of the four individuals that made the contributions (\$9,600). *Id.* at fns. 9 and 10. Of the \$170,343 in total excessive contributions, \$22,743 was contributed on December 10 and 18, 2009, by three individuals that are not named in the Audit Report. *Id.* at 12.

¹⁵ *Id.*

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1 reporting period and for the calendar year.¹⁶ The Committee did not comply with the Act's
2 reporting requirements when it misreported its activity in 2009 and 2010. In 2009, it overstated
3 opening cash on hand by \$32,344 and ending cash on hand by \$50,231, and understated receipts
4 by \$13,161 and disbursements by \$31,048.¹⁷ In 2010, it overstated opening cash on hand by
5 \$50,231 and ending cash on hand by \$61,512, and overstated receipts by \$324,404 and
6 disbursements by \$313,123.¹⁸ Therefore, the Commission finds reason to believe that the
7 Committee violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)).

¹⁶ See 52 U.S.C. § 30104(b)(1), (2), (4) (formerly 2 U.S.C. § 434(b)(1), (2), (4)).

¹⁷ Audit Rpt. at 16.

¹⁸ *Id.* at 17.

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