

APR 22 2008

FEDERAL ELECTION COMMISSION  
SECRETARIAT

FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20463

2008 APR 22 A 11:28

**SENSITIVE**

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 5952  
DATE COMPLAINT FILED: 11/05/07  
DATE OF NOTIFICATION: 11/13/07  
LAST RESPONSE RECEIVED: 01/03/08  
DATE ACTIVATED: 12/26/07  
EXPIRATION OF SOL: 06/17/12

COMPLAINANT:

Raymond Haynes, Jr.

RESPONDENTS:

Californians for Fair Election Reform  
Hillary Clinton for President and Shelly  
Moskwa, in her official capacity as  
treasurer  
Warren Hellman  
Norman Lear  
Christopher Lehane  
Nancy Parrish  
Thomas Steyer  
Margie Sullivan

RELEVANT STATUTES:

2 U.S.C. § 431(4)(A)  
2 U.S.C. § 431(8)(A)(i)  
2 U.S.C. § 441a(a)(7)(B)(i)  
11 C.F.R. § 100.22(a)-(b)  
11 C.F.R. § 100.57(a)  
11 C.F.R. § 109.20  
11 C.F.R. § 109.21  
11 C.F.R. § 300.2(c)(2)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

**I. INTRODUCTION**

This matter is based upon a complaint alleging that Christopher Lehane and Margie Sullivan are "operatives" of Hillary Clinton for President and Shelly Moskwa, in her official

1 capacity as treasurer ("Clinton Committee"), who formed a state ballot measure committee,  
2 Californians for Fair Election Reform ("CFER") to influence the 2008 presidential election by  
3 making coordinated expenditures in support of the Clinton Committee. The complaint also  
4 alleges that Thomas Steyer, Nancy Parrish, Warren Hellman, and Norman Lear made  
5 contributions to CFER that exceeded the contribution limits of the Federal Election Campaign  
6 Act of 1971, as amended ("the Act").

7 Based upon the available information, we recommend that the Commission find no  
8 reason to believe that Californians for Fair Election Reform, Hillary Clinton for President and  
9 Shelly Moskwa, in her official capacity as treasurer, Warren Hallman, Norman Lear, Christopher  
10 Lehane, Nancy Parrish, Thomas Steyer, and Margie Sullivan violated the Act in connection with  
11 the allegations in this matter and close the file.

## 12 **II. FACTUAL BACKGROUND**

13 In July 2007, a ballot measure entitled the "Presidential Election Reform Act" was  
14 submitted to the Attorney General of California to begin the process of qualifying for the June  
15 2008 Primary ballot.<sup>1</sup> The ballot measure sought to change the way the State of California  
16 allocates its presidential electors by apportioning electors according to the popular vote winner in  
17 each congressional district rather than the current statewide winner-take-all system. According to  
18 media reports, if the measure qualified for the June 2008 ballot and was approved by a majority  
19 of voters in the state, it would have gone into effect for the November 2008 general election,  
20 where it was expected to allocate a portion of California's fifty-five electoral votes to the  
21 Republican presidential nominee. See Bill Schneider, *Republicans Want a Share of California*

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<sup>1</sup> To qualify the measure for the June 2008 ballot, supporters of the initiative needed to collect 434,000 signatures of registered California voters by November 13, 2007. See Dan Morain, *GOP eyes California's electoral pie*, LOS ANGELES TIMES, August 6, 2007, at B-2.

1 *Electoral Votes*, [www.cnn.com](http://www.cnn.com), August 9, 2007 (last accessed March 17, 2008); Carla  
2 Marinucci, *GOP-backed bid to reform state's electoral process folding*, SAN FRANCISCO  
3 CHRONICLE, Sept. 28, 2007, [www.sfgate.com](http://www.sfgate.com) (last accessed March 20, 2008).

4 In August 2007, a group of California citizens established CFER as a ballot measure  
5 committee formed to oppose the Presidential Election Reform Act. CA Form 460, Recipient  
6 Committee Campaign Statement for CFER dated 1/30/2008. According to a press release,  
7 Thomas Steyer served as the Director of CFER, the group was endorsed by California's two  
8 Senators, and various state and local officials served on its Advisory Committee. CFER Press  
9 Release, August 15, 2007, [www.fairelectionreform.com/news](http://www.fairelectionreform.com/news) (last accessed April 9, 2008).  
10 State campaign finance records show that CFER reported receiving thirteen individual  
11 contributions totaling \$278,705. These contributions include the \$111,475 contribution from  
12 Thomas Steyer, \$25,000 contribution from Nancy Parrish, \$25,000 contribution from Warren  
13 Hellman, and \$50,000 contribution from Norman Lear discussed in the complaint.<sup>2</sup>

14 According to its website, CFER created and ran two radio spots and one video  
15 advertisement, all of which are accessible on the group's website. [www.fairelectionreform.com](http://www.fairelectionreform.com)  
16 (last accessed April 9, 2008). None of the advertisements specifically mention any federal  
17 candidates, but they do mention the 2008 presidential election and make references to  
18 "Republicans" and "Democrats." For example, the text of the television advertisement and one  
19 of the radio advertisements is:

20 After four years in Iraq, thousands of American lives lost; thousands more injured.  
21 It's the central issue in the 2008 Presidential campaign. If a Democrat wins,  
22 America will start bringing our troops home. If a Republican wins, there's no  
23 telling how long the war could drag on. Now, desperate to hold on to the White

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<sup>2</sup> CFER's state campaign finance disclosures indicate that Thomas Steyer made an additional contribution to CFER in the amount of \$60,000 after the complaint was filed. CA Form 460, Recipient Committee Campaign Statement for CFER dated 1/30/2008.

House, Republicans are pushing an initiative here in California that carves up our state's presidential votes and hands the presidency to the Republicans – Even if they lose the popular vote. The LA Times says Republicans are “trying to rig the presidential election.” If stopping the war is important to you, then stop and think about this initiative. A “yes” vote helps elect a Republican president. A “yes” vote prolongs the war. But this time we can say “no.” Go to [fairelectionreform.com](http://fairelectionreform.com). Help stop this partisan power grab. Dividing California's electoral votes only hurts Californians. [Paid for by Californians for Fair Election Reform with major funding from Tom Steyer.]

The text of the second radio advertisement is:

I'm a California taxpayer, and this is a taxpayer alert. Every year we pay \$50 billion more in federal taxes than we get back from Washington. For every tax dollar from California, 21 cents goes to other states. Now, after California has been shortchanged for years, special interests have cooked up a new scheme to reduce our influence even further, trying to pass an initiative carving up California's electoral votes in the presidential election. If it passes, experts say that we'll be left with less influence than states like New York, Texas, Ohio, Florida, and Illinois. The LA Times confirms it would “blunt the state's voting power.” The Orange County Register calls it profoundly subversive. If you believe California's electoral votes should be counted like everyone else's, go to [fairelectionreform.com](http://fairelectionreform.com). Help stop this scheme. Dividing California's electoral votes only hurts Californians. [Paid for by Californians for Fair Election Reform with major funding from Tom Steyer.]

*Id.* CFER's state disclosure reports indicate that the group purchased approximately \$40,000 in television and radio airtime in California for the advertisements between August 15 and September 30, 2007. See CA Form 460, Recipient Committee Campaign Statement for CFER dated 1/30/2008. In addition to links to the advertisements, the CFER website also contains links to two petitions. One states “Urge Rudy Giuliani to come clean on his ties to the right-wing power grab initiative” and has a clickable link to “E-mail Rudy Now.” [www.fairelectionreform.com](http://www.fairelectionreform.com) (last accessed April 9, 2008). The second petition link requests viewers to “Urge the 2008 presidential candidates to reject the California power grab now” and has a clickable link to “Sign Our Petition.” *Id.* In smaller print, CFER's homepage asks viewers

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1 to "contribute today" with a link to ActBlue's electronic contribution website. The disclaimer on  
2 CFER's website states that the site was paid for by CFER.

3 The complaint alleges that "Clinton operatives" Christopher Lehane and Margie Sullivan  
4 formed the ballot measure committee CFER for the purpose of supporting and assisting the  
5 Clinton campaign.<sup>3</sup> As such, the complaint also alleges that donations to CFER from "Clinton  
6 financial backers" Thomas Steyer, Nancy Parrish, Warren Hellman, and Norman Lear were  
7 actually "hidden donations" made in coordination with the Clinton Committee that exceeded the  
8 contribution limitations of the Act. Finally, the complaint states that it "defies belief" that the  
9 Clinton campaign was not involved with the effort to block the ballot initiative in question.

10 In their joint response, CFER, Thomas Steyer and Christopher Lehane deny that CFER  
11 was formed to support any particular candidate for President, but rather states that its goal was to  
12 "defeat an ill-conceived ballot measure that is designed to give the Republican Party an unfair  
13 advantage in how votes are counted in presidential campaigns." CFER Joint Response at 2.  
14 According to the Response, CFER was established by Thomas Steyer and other "concerned  
15 Californians" to oppose the Presidential Election Reform Act. *Id.* at 1. CFER retained  
16 Christopher Lehane as a political consultant based upon his experience with California politics.  
17 The CFER Response denies that Lehane works for Hillary Clinton or the Clinton Committee. *Id.*

18 The response from the Clinton Committee denies that it coordinated with CFER and  
19 asserts that the allegation that there were four overlapping contributors is an insufficient basis

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<sup>3</sup> The complaint does not detail any specific connections between Lehane, Sullivan, and the Clinton campaign, and a review of publicly available information did not uncover any ties. However, according to one media report, Lehane was a former spokesperson for President Bill Clinton's White House and Vice President Al Gore's 2000 presidential campaign and Sullivan was a former chief of staff to three Clinton Cabinet secretaries. Carla Marinucci, *Dem group played hardball to kill GOP election system plan*, SAN FRANCISCO CHRONICLE, Oct. 7, 2007, A-1, [www.sfgate.com](http://www.sfgate.com) (last accessed March 20, 2008).

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1 upon which to investigate coordination. Furthermore, the response denies that Sullivan and  
2 Lehane are "Clinton operatives" and indicates that they are neither agents, nor employees, nor  
3 volunteers of the Clinton Committee and have not received any disbursements or any other  
4 compensation from the Clinton Committee. Additionally, although not specifically alleged in the  
5 complaint, the Clinton Committee denies that it established, financed, maintained or controlled  
6 CFER. Clinton Response at 3.

7 Sullivan's response denies that she works for the Clinton Committee and states that she  
8 volunteered her time to assist CFER in her personal capacity, and not as an "operative" of any  
9 presidential campaign. Sullivan Response at 1. She states that CFER's goal is to defeat the  
10 Presidential Election Reform Act, not to favor a particular candidate for President. *Id.*

11 Finally, in their respective responses, Respondents Nancy Parrish and Warren Hellman  
12 categorically deny that their contributions to CFER were intended to support the Clinton  
13 campaign. Hellman states that his contribution was not solicited by the Clinton Committee, nor  
14 was his support for CFER affiliated with Clinton. Hellman Response at 1. Parrish states that she  
15 heard about the ballot initiative through a national news story and contacted CFER to see how  
16 she could help. Parrish Response at 1. Norman Lear did not respond to the complaint.

### 17 **III. LEGAL ANALYSIS**

#### 18 **A. CFER did not Coordinate with the Clinton Committee**

19  
20 Under the Act, an expenditure made by any person "in cooperation, consultation, or  
21 concert, with, or at the request or suggestion of" a candidate or party committee constitutes an in-  
22 kind contribution. 2 U.S.C. § 441a(a)(7)(B)(i) and (ii). The regulations that implement these  
23 statutory provisions define "coordinated" and prescribe the treatment of a "coordinated"  
24 expenditure as an in-kind contribution. 11 C.F.R. § 109.20(a) and (b).

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1 Although the complaint alleges that the donations to CFER were coordinated with the  
2 Clinton campaign, the complaint does not specifically allege – or provide any factual information  
3 upon which to find – that CFER or its donors acted “in cooperation, consultation, or concert  
4 with, or at the request or suggestion of” the Clinton Committee. Instead, the complaint merely  
5 names four common donors and two political consultants with ties to former President Bill  
6 Clinton, and concludes that that it “defies belief that the [Clinton] campaign was itself was not  
7 involved with this effort to block PERA from the ballot in order to enhance Clinton’s electoral  
8 chances.” Respondents Parrish, Hellman and Steyer specifically deny that the Clinton  
9 Committee solicited their contributions to CFER, and the Clinton Committee denies that it had  
10 any involvement in CFER’s fundraising or financing. Clinton Response at 2. Accordingly, there  
11 is no factual or legal support for finding that CFER or its donors coordinated expenditures with  
12 the Clinton Committee.

13 Furthermore, it does not appear that CFER’s radio and television advertisements were  
14 coordinated with the Clinton Committee. With respect to whether a specific communication is  
15 coordinated, 11 C.F.R. § 109.21 sets forth a three-pronged test: (1) the communication must be  
16 paid for by a person other than a Federal candidate, a candidate’s authorized committee, or  
17 political party committee, or any agent of any of the foregoing; (2) one or more of the four  
18 content standards set forth in 11 C.F.R. § 109.21(c) must be satisfied; and (3) one or more of the  
19 six conduct standards set forth in 11 C.F.R. § 109.21(d) must be satisfied. See 11 C.F.R.  
20 § 109.21(a). The Commission’s regulations specify that payments for coordinated  
21 communications are made for the purpose of influencing a federal election, and that they  
22 constitute in-kind contributions to the candidate or committee with whom or which they are  
23 coordinated, and must be reported as an expenditure made by that candidate or committee.

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11 C.F.R. § 109.21(b)(1). Accordingly, payments for coordinated communications are subject to the contribution limits of the Act.

The content standards for coordinated communications include: (1) an "electioneering communication"; (2) a "public communication" that disseminates campaign materials prepared by a candidate; (3) a communication that "expressly advocates" the election or defeat of a clearly identified federal candidate; and (4) certain "public communications," distributed 120 days or fewer before an election (for presidential candidates), which refer to a clearly identified federal candidate (or political party). 11 C.F.R. § 109.21(c). Any one of six conduct standards will satisfy the third element of the coordination test, "whether or not there is agreement or formal collaboration." 11 C.F.R. § 109.21(d) and 109.21(e).<sup>4</sup>

The television and radio advertisements paid for by CFER satisfy only the first prong of the coordinated communications test. The first prong of the coordinated communications test is satisfied because CFER – the entity that paid for the communications at issue – is a "person other than [that] candidate, authorized committee, political party committee, or agent of any of the foregoing." 11 C.F.R. § 109.21(a)(1). However, the second prong, the content standard, is not satisfied. 11 C.F.R. § 109.21(c). The advertisements are not electioneering communications because, *inter alia*, they do not refer to a clearly identified candidate, *see* 11 C.F.R. §§ 100.29(a)(1) and 109.21(c)(1); they are not "public communications" that disseminate campaign materials prepared by a candidate, *see* 11 C.F.R. § 109.21(c)(2); they do not "expressly

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<sup>4</sup> These conduct standards include: (1) communications made at the "request or suggestion" of the relevant candidate or committee; (2) communications made with the "material involvement" of the relevant candidate or committee; (3) communications made after one or more "substantial discussions" between the person paying for the communication and the relevant candidate or committee; (4) specific actions of a "common vendor"; (5) specific actions of a "former employee"; and (6) specific actions relating to the dissemination of campaign material. 11 C.F.R. § 109.21(d)(1)-(6).



1 advocate" the election or defeat of a clearly identified federal candidate, *see* 11 C.F.R.  
2 § 109.21(c)(3); and they were not distributed 120 days or fewer before a presidential candidate's  
3 primary election,<sup>5</sup> *see* 11 C.F.R. § 109.21(c)(4)(ii) and (iii).

4 Because the content prong of the coordination test is not met, we do not need to analyze  
5 the third prong of the test, the conduct prong. However, we note that the complaint did not  
6 actually allege, nor have we found, any connection between CFER, the Clinton Committee or any  
7 of the donors that would satisfy any of the conduct standards at 11 C.F.R. § 109.21(d)(1)-(6). In  
8 light of the speculative nature of the allegations and the lack of factual information to  
9 substantiate the claims, there is no support for finding that CFER coordinated its television and  
10 radio advertisements with the Clinton Committee.

11 **B. CFER is not a Political Committee under the Act**

12 The complainant's allegations that CFER was formed solely to help the Clinton campaign  
13 and that contributions to CFER should be considered contributions to the Clinton Committee  
14 raise the issue of whether CFER is a political committee under 2 U.S.C. § 431(4)(A). The Act  
15 defines a "political committee" as any committee, club, association, or other group of persons  
16 that receives "contributions" or makes "expenditures" for the purpose of influencing a federal  
17 election that aggregate in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A). To  
18 address overbreadth concerns, the Supreme Court has held that only organizations whose major  
19 purpose is campaign activity can potentially qualify as political committees under the Act. *See,*  
20 *e.g., Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life*, 479 U.S.

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<sup>5</sup> The presidential primary election was scheduled for February 5, 2008, thus the 120-day period set forth at 11 C.F.R. § 109.21(c)(4)(ii) started on October 8, 2007. The available information indicates that the advertisements ran in August and September only. Although they were available on CFER's website during the 120-day period, the exemption for communications over the Internet from the definition of "public communication" at 11 C.F.R. § 100.26 is applicable here.

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238, 262 (1986) (“*MCFL*”). The Commission has long applied the Court’s major purpose test in determining whether an organization is a “political committee” under the Act, and it interprets that test as limited to organizations whose major purpose is federal campaign activity. *See* Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597, 5601 (Feb. 7, 2007); *see also* FEC’s Mem. in Support of Its Second Mot. for Summ. J., *Emily’s List v. FEC*, Civ. No. 05-0049 at 21 (D.D.C. Oct. 9, 2007).

1. There is no basis to conclude that CFER received contributions exceeding \$1,000

The term “contribution” is defined to include “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.” 2 U.S.C. § 431(8)(A)(i). A gift, subscription, loan, advance, or deposit of money or anything of value made by any person in response to any communication is a contribution to the person making the communication if the communication indicates that any portion of the funds received will be used to support or oppose the election of a clearly identified Federal candidate. 11 C.F.R. § 100.57(a).

The complaint alleges that Thomas Steyer, Nancy Parrish, Warren Hellman and Norman Lear contributed to CFER for the purpose of helping the Clinton Committee by funding the effort to block the ballot initiative. However, the complaint did not submit any solicitations or direct mail fundraising appeals that would indicate that CFER was soliciting funds for the purpose of influencing an election for Federal office. Furthermore, the only publicly available solicitation we identified was a “contribute today” link from CFER’s website to an ActBlue contribution page. The text of the ActBlue page contains no references to any Federal candidates and instead urges contributions to help the effort to defeat the ballot initiative and “stop the Republican

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1 power grab in California.” Thus, because there is no indication that CFER’s communications to  
2 donors “indicate[d] that any portion of the funds received will be used to support or oppose the  
3 election of a clearly identified Federal candidate,” there is no evidence that CFER engaged in  
4 fundraising under these provisions. 11 C.F.R. § 100.57(a). Therefore, there is an insufficient  
5 basis on which to conclude that CFER has received contributions exceeding \$1,000 and triggered  
6 political committee status through contributions.

7 2. There is no basis to conclude that CFER made expenditures exceeding \$1,000  
8

9 In determining whether an organization makes an expenditure, the Commission “analyzes  
10 whether expenditures for any of an organization’s communications made independently of a  
11 candidate constitute express advocacy either under 11 C.F.R. § 100.22(a), or the broader  
12 definition at 11 C.F.R. § 100.22(b).” Supplemental Explanation and Justification, Political  
13 Committee Status, 72 Fed. Reg. 5595, 5606 (Feb. 7, 2007). Under the Commission’s  
14 regulations, a communication contains express advocacy when it uses phrases such as “vote for  
15 the President,” “re-elect your Congressman,” or “Smith for Congress,” or uses campaign slogans  
16 or words that in context have no other reasonable meaning than to urge the election or defeat of  
17 one or more clearly identified candidates, such as posters, bumper stickers, or advertisements that  
18 say, “Nixon’s the One,” “Carter ‘76,” “Reagan/Bush,” or “Mondale!” 11 C.F.R. § 100.22(a); *see*  
19 *also MCFL*, 479 U.S. at 249 (“[The publication] provides in effect an explicit directive: vote for  
20 these (named) candidates. The fact that this message is marginally less direct than “Vote for  
21 Smith” does not change its essential nature.”). Courts have held that “express advocacy also  
22 includes verbs that exhort one to campaign for, or contribute to, a clearly identified candidate.”  
23 *FEC v. Christian Coalition*, 52 F.Supp. 2d 45, 62 (D.D.C. 1999) (explaining why *Buckley*, 424

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U.S. at 44, n.52, included the word "support," in addition to "vote for" or "elect," on its list of examples of express advocacy communication).

The Commission's regulations further provide that express advocacy includes communications containing an "electoral portion" that is "unmistakable, unambiguous, and suggestive of only one meaning" and about which "reasonable minds could not differ as to whether it encourages actions to elect or defeat" a candidate when taken as a whole and with limited reference to external events, such as the proximity to the election. 11 C.F.R. § 100.22(b).<sup>6</sup>

As discussed in the factual background section of this report, CFER distributed at least three radio and television advertisements and had a website that contained several links. A review of the ads reveals that none of them mention a clearly identified federal candidate and instead focus on the general terms of "Republican" and "Democrat." At the time the ads ran in California in August and September 2007, there were numerous candidates in the race and no presumptive nominee for either party. Although the advertisements mention the 2008 presidential election, they contain no exhortations that a viewer would understand as urging action for Clinton's election. The ads in question do not contain phrases, slogans or words that explicitly or "in effect" urge the election of Hillary Clinton or the defeat of any other presidential candidate. See 11 C.F.R. § 100.22(a). Instead, the only action the advertisements encourage is to

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<sup>6</sup> In *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. \_\_\_, 127 S.Ct. 2652 (2007) (*WRTL*), the U.S. Supreme Court held that "an ad is the functional equivalent of express advocacy," and thus subject to the ban against corporate funding of electioneering communications, "only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *Id.*, 127 S.Ct. at 2667. Although 11 C.F.R. § 100.22 was not at issue in the matter, the Court's analysis included examining whether the electioneering communication had "indicia of express advocacy" such as the "mention [of] an election, candidacy, political party, or challenger" or whether it "take[s] a position on a candidate's character, qualifications, or fitness for office." *Id.* The Commission subsequently incorporated the principles set forth in the *WRTL* opinion into its regulations governing permissible uses of corporate and labor organization funds for electioneering communications at 11 C.F.R. § 114.15. See Final Rule on Electioneering Communications, 72 Fed. Reg. 72899, 72914 (Dec. 26, 2007).

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1 “help stop this partisan power grab” by voting to defeat the ballot initiative. *See* 11 C.F.R.  
2 § 100.22(b).

3 Similarly, the links on CFER’s website do not appear to expressly advocate the election  
4 or defeat of a clearly identified candidate. Although one of the links specifically names Rudy  
5 Giuliani, who at the time was candidate for the Republican nomination, the text on the website  
6 does not encourage his election or defeat, and instead asks viewers to email Giuliani to “urge  
7 [him] to come clean on his ties to the right-wing power grab initiative.” 11 C.F.R § 100.22(a).  
8 The second link does not specifically identify any candidate, and instead urges viewers to email  
9 all of the candidates – Republican and Democrat. In asking viewers to email the candidates, the  
10 only actions these links encourage is to defeat the ballot initiative. 11 C.F.R § 100.22(b).

11 Therefore, there is no basis upon which to conclude that CFER has made expenditures  
12 exceeding \$1,000 and triggered political committee status through expenditures.<sup>7</sup>

13 **C. The Clinton Committee did not Establish, Finance, Maintain or Control CFER**

14 Finally, the complaint alleges that “Clinton operatives” were instrumental in “forming  
15 and donating to CFER,” which may be construed as an allegation that the Clinton Committee,  
16 through agents, established, financed, maintained or controlled CFER. To determine whether a  
17 Federal candidate or officeholder directly or indirectly establishd, financed, maintained or  
18 controlled another entity, the Commission applies the ten factors set forth at 11 C.F.R.

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<sup>7</sup> Because we conclude that CFER does not appear to have accepted contributions in excess of \$1,000 or made expenditures in excess of \$1,000, it is unnecessary for the Commission to make a determination as to the major purpose of CFER.

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1 § 300.2(c)(2)(i) through (x), as well as any other relevant factors, in the context of the overall  
2 relationship between the Federal candidate or officeholder and the entity.<sup>8</sup>

3 The only information the complaint points to in support of its allegation that the Clinton  
4 Committee "established, financed, maintained or controlled" CFER is that two individuals with  
5 prior connections to Hillary Clinton's husband, President Bill Clinton, are political consultants  
6 for CFER, and four large donors to CFER are also donors to the Clinton Campaign. See  
7 Complaint at 2. Applying the ten factors to these tenuous connections is insufficient to show that  
8 the Clinton Committee established, financed, maintained or controlled CFER. In fact, based  
9 upon the limited information contained in the complaint and available in the public domain, it  
10 does not appear any of the ten factors are present with respect to the Clinton Committee's  
11 relationship to CFER. 11 C.F.R. § 300.2(c)(2)(i) through (x). Additionally, in its Response, the  
12 Clinton Committee explicitly denied that it established, financed, maintained or controlled  
13 CFER. Clinton Response at 2. The Clinton Committee contends that it has no role with respect

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<sup>8</sup> Such factors include, but are not limited to: (i) Whether a sponsor, directly or through its agent, owns controlling interest in the voting stock or securities of the entity; (ii) Whether a sponsor, directly or through its agent, has the authority or ability to direct or participate in the governance of the entity through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures; (iii) Whether a sponsor, directly or through its agent, has the authority or ability to hire, appoint, demote, or otherwise control the officers, or other decision-making employees or members of the entity; (iv) Whether a sponsor has a common or overlapping membership with the entity that indicates a formal or ongoing relationship between the sponsor and the entity; (v) Whether a sponsor has common or overlapping officers or employees with the entity that indicates a formal or ongoing relationship between the sponsor and the entity; (vi) Whether a sponsor has any members, officers, or employees who were members, officers or employees of the entity that indicates a formal or ongoing relationship between the sponsor and the entity, or that indicates the creation of a successor entity; (vii) Whether a sponsor, directly or through its agent, provides funds or goods in a significant amount or on an ongoing basis to the entity, such as through direct or indirect payments for administrative, fundraising, or other costs, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17, and otherwise lawfully; (viii) Whether a sponsor, directly or through its agent, causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17, and otherwise lawfully; (ix) Whether a sponsor, directly or through its agent, had an active or significant role in the formation of the entity; and (x) Whether the sponsor and the entity have similar patterns of receipts or disbursements that indicate a formal or ongoing relationship between the sponsor and the entity. 11 C.F.R. § 300.2(c)(2).

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1 to CFER, there are no overlapping officers or staff, the Clinton Committee did not provide any  
2 funds to CFER and does not control CFER's activities. *Id.* Therefore, there is no basis upon  
3 which to conclude that the Clinton Committee established, financed, maintained or controlled  
4 CFER.

5 **D. Conclusion**

6 For the reasons set forth above, we recommend that the Commission find no reason to  
7 believe that Californians for Fair Election Reform, Hillary Clinton for President and Shelly  
8 Moskwa, in her official capacity as treasurer, Warren Hellman, Norman Lear, Christopher  
9 Lehane, Nancy Parrish, Thomas Steyer, and Margie Sullivan violated the Act in connection with  
10 the allegations in this matter and close the file.

11 **IV. RECOMMENDATIONS**

- 12 1. Find no reason to believe that Californians for Fair Election Reform, Hillary Clinton  
13 for President and Shelly Moskwa, in her official capacity as treasurer, Warren  
14 Hellman, Norman Lear, Christopher Lehane, Nancy Parrish, Thomas Steyer, and  
15 Margie Sullivan violated the Act in connection with the allegations in this matter.  
16  
17 2. Approve the attached Factual and Legal Analyses.  
18  
19 3. Approve the appropriate letters.

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