

JUN 08 2000

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

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 4850
DATE COMPLAINT FILED: 11/2/98
DATE OF NOTIFICATION: 11/9/98¹
DATE ACTIVATED: 3/26/99

SOL: 6/26/02
STAFF MEMBER: Roy Q. Lockett
Anne Weissenborn

COMPLAINANT: Eugene V. Prisco

RESPONDENTS: Rep. Vito Fossella
Committee to Re-Elect Vito Fossella and Anthony J. ²⁰⁰⁰ Maltese,
as treasurer
ADCO Electric Corporation
Angiuli Motors, Inc
Deloitte & Touche LLP
Gina Addeo
Richard Addeo
Ciro Amaturò
Joanne Amaturò
Jack Anderson
Salvatore Calcagno
Thomas Conte
Frank Covino
Jeanne Cretella
Mark File
George Gasper
Jordan Gatti
Louis Gandelli
Robert Harper
Charlene Jones
Andrew Leider
Mark Lipton
John McCullough
Gabrielle Miglino

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¹ It should be noted that respondents Angiuli Motors, Inc. and George Quinn of 27 Gilroy Street, Staten Island, NY were notified on April 5, 2000. The circumstances surrounding these notifications will be discussed more fully in footnotes 7 and 11, respectively.

Michael Miglino
 Robert Murphy
 Lois Nicotra
 Richard Nicotra
 Getz Obstfeld
 Thomas Pollando
 Ronald Purpora
 George Quinn
 Bruce Ratner
 Nelson Rockefeller, Jr.
 Steven Salami
 Ronald Scimone
 John Sipp
 Robert Supina
 Edward Welsh
 Lisa Yost

RELEVANT STATUTES:

2 U.S.C. §§ 431(1)(A) and (B)
 2 U.S.C. § 431(8)(A)(i)
 2 U.S.C. § 432(b)(1)
 2 U.S.C. § 434(b)(3)(a)
 2 U.S.C. § 441a(b)(6)
 2 U.S.C. § 441a(f)
 2 U.S.C. § 441a(a)(1)(A)
 2 U.S.C. § 441b(b)(2)
 2 U.S.C. § 441f
 11 C.F.R. §§ 100.2(b), (c), (e) and (f)
 11 C.F.R. § 102.8(a)
 11 C.F.R. §§ 103.3(a), and (b)
 11 C.F.R. § 104.8(d)(2)(i)
 11 C.F.R. § 110.1(3)(i)
 11 C.F.R. § 110.1(k)
 11 C.F.R. § 110.1(b)(2)(ii)
 11 C.F.R. §§ 110.1(b)(3)(i), (ii), (iii), and (iv)
 11 C.F.R. § 110.1(b)(5)
 11 C.F.R. § 110.2(b)(3)(i)
 11 C.F.R. § 110.9(a)
 11 C.F.R. § 114.2(f)(4)(ii)
 11 C.F.R. § 114.2 (j)

INTERNAL REPORTS CHECKED: Disclosure Reports
 Commission Indices

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

Eugene V. Prisco² ("Complainant") filed a complaint on November 9, 1998 alleging that certain persons and entities violated sections of the Federal Election Campaign Act of 1971, as amended, (the "Act") and the Commission's regulations. Specifically, the November 9th complaint alleges that during 1997 and 1998 Rep. Vito Fossella and his principal campaign committee, the Committee to Re-Elect Vito Fossella Committee and Anthony J. Maltese, as treasurer, ("Fossella Committee"), accepted prohibited and excessive contributions. The complainant alleges that the violations occurred over the course of four (4) separate elections that took place during 1997 and 1998. The four elections were as follows: (1) the certification of Fossella's nomination by the appropriate Republican committee(s) for the 13th Congressional District in the state of New York on September 16, 1997 (hereinafter referred to as the September 16, 1997 Primary Election);³ (2) the 1997 Special/General Election held on

² Mr. Prisco, the complainant, ran against Rep. Fossella's bid for re-election in 1998. Mr. Fossella was a Republican candidate for U.S. Congress in 1997 after former Rep. Susan Molinari resigned from office in August of 1997. He was elected in 1997, and subsequently ran for re-election in 1998.

³ The Commission should be advised that, while this Office has decided to treat September 16, 1997 as the date of the 1997 Primary Election for purposes of contribution limits, the actual date that Mr. Fossella was nominated by the Republican Party is unclear. New York state law (Section 6-116, Article 6) provides that, for an election to fill a vacancy, "a party nomination ... shall be made, after the day of the primary election by a ... majority vote of a quorum of the members of a county committee or committees last elected in the political subdivision in which such vacancy is to be filled, or by a majority of such other committee as the rules of the party may provide." Furthermore, "[a] certificate of nomination shall be filed as provided for herein." (Section 6-116, Article 6).

Information that the Commission obtained at the time for purposes of determining the filing deadlines for the special election indicated that that the nomination was to be officially determined by the party, as party rules provide, at a meeting held after the state primary (which took place on September 9, 1997) but no later than September 16, 1997. Therefore, the party had the period of September 10, 1997 to September 16, 1997 to choose their nominee and file with the New York city board. Although media accounts indicate that Mr. Fossella was effectively selected as the Republican nominee as early as the first week of June, 1997, immediately after Rep. Molinari announced her intention to resign, this selection appears not to have been under the authority of state law, as no vacancy was declared until Rep. Molinari actually left the House in August. See 11 C.F.R. §§ 100.2(c)(1), 100.2(e) (caucus or convention must have authority from state law to nominate in order to be "primary election" under the Act); compare FEC v. Citizens for Sen. Wofford, No. CV-94-2057 (E.D. Pa. Jan.31, 1996) (where caucus had authority from state law to select nominee and did so, selection date, not later certification, was "primary election" for purposes of Act).

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November 4, 1997; (3) the 1998 Primary Election held on September 15, 1998; and (4) the 1998 General Election held on November 3, 1998.

II. FACTUAL AND LEGAL ANALYSIS

A. Complaint

The complainant makes four (4) specific allegations against the Fossella Committee and thirty-five of its contributors. First, the complainant alleges that the Fossella Committee illegally accepted contributions from eight (8) individuals after the date of what it terms the September 16, 1997 "party convention," which was held in lieu of a primary election. According to the complaint, these post convention/post-primary contributions were impermissibly accepted because the Committee had no debts outstanding as of the date of the convention/primary. The complainant identified the contributions as being made by eight individuals: Jack R. Anderson, Salvatore Calcagno, Frank P. Covino, Jeanne Cretella, Charlene Jones, George Quinn, Bruce Ratner, and Nelson A. Rockefeller, Jr.

Second, the complainant alleges that the Fossella Committee accepted straight-forward excessive contributions from three (3) individuals prior to the primary election in 1997. The three individuals in question are John McCullough, Robert Murphy⁴ and Ronald Purpora.⁵ It is alleged that said respondents each made contributions in the amount of \$2,000 for the primary, exceeding the \$1,000 maximum contribution allowable.

Third, the complainant alleges that the Fossella Committee accepted excessive contributions from seven (7) individuals with respect to the 1998 Primary Election held on

⁴ This Office was unable to locate this Respondent.

⁵ This Respondent did not submit a response to the complaint.

September 15, 1998. Attachment 1. It is alleged that these contributions are excessive because they were received after, but accepted for, the September 15, 1998 Primary Election, although the Fossella Committee did not disclose any outstanding net debts from that election. Those individuals are as follows: Mark D. Lipton, Getz Obtsfeld, Steven H. Salami, John Sipp, Andrew B. Leider, Lois Nicotra and Richard Nicotra.⁶

Finally, the complainant appears to allege that ADCO Electric Corporation ("ADCO") and/or its president, Anguili Motors, Inc.⁷ and Deloitte & Touche USA, LLP ("Deloitte") made contributions through "intermediaries or conduits" to the Fossella Committee. According to the New York Secretary of State's office, all three businesses are incorporated.

Further, with respect to the ADCO portion of the complaint, complainant alleges that employees of ADCO and their relatives made contributions in the name of another. Specifically, it is purported that seventeen (17) individuals connected with ADCO made contributions to the Fossella Committee totaling \$44,700, and that the president of ADCO, Richard Addeo, made these contributions through these individuals. The reported contributors are as follows: Richard Addeo, Gina Addeo, Ciro Amaturro, Joanne Amaturro, Thomas Conte, Mark File, George Gasper, Jordan Gatti, Louis Grandelli, Robert Harper, Gabrielle Miglino, Michael Miglino, Thomas Pollando, Ronald Scimone, Robert Supina, Edward Welsh, and Lisa Yost.

The complaint does not specifically identify any individuals as "conduits" of contributions received from employees of Anguili Motors, Inc. or Deloitte & Touche, USA, LLP.

⁶ Andrew B. Leider, Lois Nicotra and Richard Nicotra did not respond to the allegations lodged in the complaint.

⁷ At the time in which the complaint was filed, this Office was unable to locate the respondent. This Office has subsequently located the respondent, and has received a response with respect to this matter.

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B. Applicable Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), specifically provides that no person may make a contribution to a candidate for Federal office, and his or her authorized campaign committee, in excess of \$1,000 per election. 2 U.S.C. §441a(a)(1)(A). No candidate committee may knowingly accept contributions in excess of the prescribed limits.

2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a). Corporations are prohibited from making contributions or expenditures in connection with any election for Federal office.

2 U.S.C. § 441b. The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purposes of influencing an election for Federal office. 2 U.S.C. § 431(8)(A)(i). See also 2 U.S.C. §441b(b)(2).

Furthermore, the contribution limitations shall apply separately with respect to each election.

2 U.S.C. § 441a(a)(6).

Primary elections, special elections, general elections, and party conventions with authority to nominate a candidate are viewed by the Act as separate elections for the purposes of the contribution limits. 2 U.S.C. §§ 431(1)(A) and (B); 11 C.F.R. § 100.2(b), (c), (e) and (f).

Contributors to candidates are encouraged to designate their contributions in writing for particular elections. 11 C.F.R. § 110.1(b)(2)(i). A contribution shall be considered to be designated in writing for a particular election if: the contribution is made by check, money order, or other negotiable instrument which clearly indicates the particular election with respect to which the contribution is made; the contribution is accompanied by a writing, signed by the contributor, which clearly indicates the particular election with respect to which the contribution is made; or the contribution is redesignated. 11 C.F.R. § 110.1(b)(4). In cases where a contribution is not designated in writing by the contributor for a particular election, the

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contribution is considered to have been made in connection with the next election for that Federal office after the contribution is made. 11 C.F.R. § 110.1(b)(2)(ii).

The treasurer of an authorized political committee may request a written redesignation of a contribution by the contributor for a different election if: the contribution was designated in writing for a particular election, and the contribution, either on its face or when aggregated with other contributions from the same election, exceeds the \$1,000 per election maximum limit; the contribution was designated in writing for a particular election and the contribution was made after that election and the contribution cannot be accepted under net debts outstanding provisions; or the contribution was not designated in writing for a particular election, and the contribution exceeds the \$1,000 per election limitation or the contribution was not designated in writing for a particular election, and the contribution was received after the date of an election for which there are no net debts outstanding on the date the contribution is received.

11 C.F.R. § 110.1(b)(5)(i).

A contribution designated in writing for a particular election, but made after that election, shall be made only to the extent that the contribution does not exceed net debts outstanding from such election. 11 C.F.R. § 110.1(3)(i). Net debts outstanding are calculated as of the day of election and mean the total amount of unpaid debt and obligations incurred with respect to an election, less the sum of: the total available cash on hand to pay those debts and obligations, and the total amount owed to the candidate or political committee in the form of credits, refunds of deposits, returns, or receivables, etc. 11 C.F.R. § 110.1(b)(3)(ii). If net debts outstanding do exist, then, as additional funds are received and expenditures made, the amount of net debts outstanding shall be adjusted. Conversely, if net debts outstanding do not exist after an election, then a committee may not lawfully accept any post-election contributions for that election for any

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purpose. 11 C.F.R. § 110.1(b)(3)(iii). Candidates who participate in both the primary and general elections may pay primary election debts and obligations with funds which represent contributions made with respect to the general election. 11 C.F.R. § 110.1(b)(3)(iv).

Contributions that are made by more than one person shall include the signature of each contributor on the check or in a separate writing. If a joint contribution does not indicate the amount that is to be attributed to each contributor, the contribution will be attributed equally to each contributor. 11 C.F.R. § 110.1(k)(1) and (2). If a contribution to a candidate either on its face or when aggregated with other contributions from the same contributor exceeds the limitations, the treasurer may inquire whether the contribution was intended to be a joint contribution by more than one person. 11 C.F.R. § 110.1(k)(3)(i).

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A contribution shall be considered to be reattributed to another contributor if: 1) the treasurer of the recipient committee asks the contributor whether the contribution was intended to be a joint contribution, and informs the contributor that he or she may request a reattribution of the excessive portion of the contribution if it was intended to be a joint contribution; and, 2) within 60 days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended. 11 C.F.R. §§ 110.1(k)(3)(ii)(A) and (B).

No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution and no person shall knowingly accept a contribution made by one person in the name of another person. 2 U.S.C. § 441f.

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Pages 10 - 11 DELETED

2. Responses from Contributors Regarding 1997 Post-Primary Contributions

This Office has received numerous responses from contributors concerning the alleged making of excessive post-primary contributions in 1997. Respondents have provided a variety of explanations regarding the intended attributions and designations of their contributions.

Respondents Jack R. Anderson, Salvatore Calcagno, and Frank Covino aver that their \$2,000 contributions were equally attributable to their respective spouses. Attachments 1, 2, and 3. Mr. Calcagno also asserts that his and his wife's contributions, which were made on September 28, 1997, were designated for both the Primary and General Elections.¹⁰

Charlene Jones responds that on or about October 15, 1997 she made two separate contributions

¹⁰ Jack Anderson asserts that the \$2,000 contribution was made exclusively for the 1997 general election. Mr. and Mrs. Covino do not specifically state for which election their contribution was designed.

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to the Fossella Committee of \$1,000 each and intended that her contributions be applied toward both the Primary Election and the General Election. Attachment 5. George Quinn¹¹ avers that he only made one contribution to the Fossella Committee on October 25, 1998, for \$1,000 (the specific designation was not stated), and that he did not make a \$200 contribution on October 24, 1997, as alleged in the complaint. Attachment 6. Of these respondents, only Jack R. Anderson and Salvatore Calcagno provided this Office with a photocopy of their respective canceled checks.¹²

The remaining respondents involved in the 1997 contribution issue, Bruce Ratner and Nelson A. Rockefeller, Jr., both contend that their contributions were made within allowable limits and prior to the date of the Primary Election. Mr. Ratner, through counsel, asserts that he made a \$2,000 contribution to the Fossella Committee on September 3, 1997, and designated it for the Primary and General Elections. Attachment 7.

According to counsel for Nelson A. Rockefeller, Mr. Rockefeller made a \$1,000 contribution to the Fossella Committee on September 3, 1997 intended for use in connection with

¹¹ Based on the response received from George Quinn, and a review of the Fossella Committee's disclosure reports, this Office has found that the wrong Mr. George Quinn was originally notified with respect to this complaint. The Fossella Committee's disclosure reports contain the names of two different George Quinns: 1) George Quinn, who is retired and resides at 4170 Richmond Ave, Staten Island, NY; and 2) George Quinn, a stockbroker residing at 27 Gilroy Street, Staten Island, NY. Only Mr. Quinn of 4170 Richmond Ave. was originally notified of the complaint. The complaint alleges that "George Quinn" made a \$200 post-primary contribution dated October 24, 1997. Mr. Quinn of Richmond Avenue asserts in his response dated November 18, 1998 that he never made an October 24, 1997 contribution in the amount of \$200. According to the Fossella Committee's November 26, 1999 amendment to its 1997 30 Day Post General Election Report, Mr. Quinn of 27 Gilroy Street made a \$200 contribution for use in the 1997 General Election on or about October 24, 1997. Mr. Quinn of Richmond Ave. reportedly made one \$1,000 contribution on or about October 28, 1997 designated for the 1997 General Election, and no other contributions. Thus, it would appear as if Mr. Quinn of 4170 Richmond Ave. did not make a post-primary contribution.

Mr. Quinn of 27 Gilroy Street has since been notified and given an opportunity to respond to the allegation outlined in the complaint. This Office will address his contributions in the analysis section of this report.

¹² While both Jack R. Anderson and Salvatore Calcagno provided this Office with photocopies of their canceled checks, in each case the check bore the signature of only one spouse.

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the 1997 Primary Election. Attachment 8. Counsel notes that the date on which the contribution was issued conflicts with the date of receipt reported in the complaint, which was September 18, 1997. When counsel inquired about the discrepancy between the two dates, the Fossella Committee allegedly advised him that

its practice was to gather checks for processing in batches and to enter the date of deposit in its bank account as the date of receipt of each contribution – without regard to when each check was actually received. Thus, it is likely that Mr. Rockefeller's check was received and held for a number of days prior to being processed.

Id. Pgs. 1-2.

Counsel further states that the Fossella Committee had advised that there was outstanding primary debt as of September 18, 1997, the date on which the Committee formally recorded receipt of Mr. Rockefeller's check. *Id.* p.2.

3. McCullough Contribution in 1997

John McCullough has submitted a response with respect to the allegation of a straight-forward excessive contribution made in 1997. Mr. McCullough's response, dated December 3, 1998, indicates that he made a \$2,000 contribution on September 4, 1997 to the Fossella Committee and intended that \$1,000 be applied toward the Primary Election and \$1,000 be applied toward the General Election. Attachment 9. However, counsel for Mr. McCullough did not submit a copy of the check so that this Office could verify how or if the contribution was designated by the donor.

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4. Responses from Contributors Regarding 1998 Post-Primary Contributions

With respect to the allegation of excessive 1998 post-primary contributions, the individual respondents have averred that their contributions were lawfully made for both the 1998 Primary Election and 1998 General Election. Respondents Mark D. Lipton, Getz Obstfeld, Steven S. Salami, and John Sipp state that they each made contributions in the amount of \$1,000 for the Primary Election and \$1,000 for the General Election.¹³ Attachments 10, 11, 12 and 13.

Mr. Sipp's statement is distinguishable from the other three respondents in that his \$2,000 contribution was comprised of three (3) separate contributions which are explained as follows:

\$250 on May 5th, \$450 for three tickets to a cocktail reception on October 8th, and an additional contribution of \$1,300, also on October 8th, 1998. It is my understanding that one-half of the total contribution has been applied to the Primary fund, and the remaining half for the General Election fund.

Id.

On its 1998 July Quarterly Report, the Fossella Committee disclosed the receipt of \$250 from Mr. Sipp as designated for the Primary election. In addition, on October 26, 1998, the Fossella Committee disclosed the receipt of two (2) contributions from Mr. Sipp on October 24, 1998. The first contribution totaled \$1,000 and was reported as designated for the General Election, while the second contribution totaled \$300 and was reported as designated for the Primary Election. On November 26, 1999, the Fossella Committee filed an amendment to its 1998 30 Day Post-General Report disclosing a reattributed contribution from Mr. Sipp to his wife, Dorothy Sipp, on November 17, 1998 in the amount of \$450.

¹³ These respondents did not provide a photocopy of their canceled checks. Respondents Lipton and Obstfeld made these contributions on or about October 24, 1998, while Mr. Salami made his contribution on or about October 31, 1998.

5. Prohibited Contributions—Contributions in the name of Another

Finally, there are the responses to the allegations of prohibited contributions or of the making of contributions in the name of another, using corporate employees. The respondents associated with the ADCO Electric Corporation who did respond, namely Richard and Gina Addeo, Ciro and Joanne Amaturro, Thomas Conte, Mark File, George Gasper, Jordan Gatti, Robert J. Harper, Michael and Gabrielle Miglino, Thomas Pollando, Ronald Scimone, Robert Supina, and Edward Welsh assert that their contributions were lawfully made, jointly with their respective spouses, and that no "conduits" were involved.¹⁴ Attachments 14-25.

Respondents Addeo, Amaturro, Conte, Harper and Gatti have not provided photocopies of their canceled checks. The remaining respondents have shown that the contributions were made from personal accounts. Although the canceled checks submitted were drawn on joint accounts held by each respondent and his or her respective spouse, each check was signed by only one spouse.

With respect to Deloitte & Touche, USA, LLP, on November 23, 1998, counsel for Deloitte & Touche submitted a response to the allegations raised by the complainant.

Attachment 26. Deloitte & Touche requests that the Commission take no further action in this matter, because the allegation against Deloitte & Touche does not provide any supporting facts and, thus assertedly does not meet the minimum requirements established by the Commission's regulations for advancing a complaint.

Louise B. Angiuli, Secretary/Treasurer of Angiuli Motors Inc. submitted a response to the allegations raised in the complaint. Attachment 27. It is the position of Angiuli Motors that "[a]t

¹⁴ Mr. Richard Addeo submitted a response on behalf of ADCO. Louis Gandelli, Andrew B. Leider, Lois Nicotra and Richard Nicotra and Lisa Yost did not submit a response.

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no time was any contribution made via conduit or intermediaries....” Angiuli also states that “any contribution were made by the individuals on their behalf and as an expression of their own personal preferences and beliefs.”

D. Analysis

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a) Making of Post-Primary Contributions by Named Respondents

1) Jack R. Anderson

The Fossella Committee reported receiving two \$1,000 contributions from Mr. Anderson on September 22, 1997: 1) a \$1,000 contribution reported as designated for the 1997 Primary Election; and 2) a \$1,000 contribution reported as designated for the 1997 General Election. As noted above, the certification of Fossella's nomination by the appropriate Republican committee(s) for the 13th Congressional District in the state of New York took place on September 16, 1997. Jack R. Anderson's response included a photocopy of a canceled check made payable to the Fossella Committee (Fossella for Congress) in the amount of \$2,000 on September 17, 1997. The check appears to be drawn on the account of Mr. Anderson; at present, the Commission does not possess definitive evidence that the account was held jointly between Mr. and Mrs. Anderson, or between Mr. Anderson and other person. Furthermore, the check bears the signature of only one individual, Neil Anderson, the respondent's son. According to

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11 C.F.R. § 104.8(c), absent evidence to the contrary, any contribution made by check shall be reported as a contribution by the last person signing the check prior to delivery to the candidate or committee.

Neil Anderson's signature on the check initially raises the issue of whether the committee violated 11 C.F.R. § 104.8(c) by not reporting him as the contributor of the \$2,000 contribution; however, information presented by Jack R. Anderson appears to overcome the regulation's "last signature" presumption. First, in Jack Anderson's response to the complaint he acknowledges that his son, Neil Anderson, signed the September 17, 1997 check. But Mr. Anderson also has provided this Office with a photocopy of the September 15, 1997 letter which supposedly accompanied the aforementioned check. This letter, which bears the signature of Jack Anderson only, notes that both he and Mrs. Anderson had enclosed a check in the amount of \$2,000 to support Mr. Fossella's candidacy for Congress. Moreover, the check itself is drawn on an account that appears to be only in the name of Jack R. Anderson.

Based on the information presented, this Office believes, contrary to Mr. Anderson's assertion, that there is insufficient evidence demonstrating that a joint contribution was made. According to 11 C.F.R. § 110.1(k)(1), any contribution made by more than one person shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. While Mr. Anderson argues in his response that he made a joint contribution with his wife for use in the 1997 General Election, Mrs. Anderson's signature is not present on any of the documentation provided by either Mr. Anderson or the Fossella Committee; Mrs Anderson's signature cannot be found on the canceled check, Mr. Anderson's response to the complaint, or the September 15, 1997 letter which accompanied the check.

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While Mr. Anderson's September 15, 1997 letter seems to indicate an intent to make a joint contribution by the respondent and his wife, via the language "Mrs. Anderson and I were very pleased with your comments ... and wish to support your candidacy with the enclosed check for \$2,000," the letter is signed only by Mr. Anderson. Furthermore, the check indicates that only Mr. Anderson made the contribution, and the check is drawn on the account of Mr. Anderson, which does not appear to be a joint account.

In addition, the Fossella Committee's amended disclosure reports recognize Mr. Anderson's \$2,000 contribution as an individual contribution; According to the Fossella Committee's most recently amended 1997 Pre-Special Report, on or about September 22, 1997 Jack Anderson made two contributions in the aggregate amount of \$2,000: 1) a \$1,000 contribution in connection with the 1997 Primary Election; and 2) a \$1,000 contribution in connection with the 1997 General Election. Thus, it appears that the \$2,000 contribution was not a joint contribution between Mr. and Mrs. Anderson, but rather a contribution made by Jack R. Anderson alone.

Considering that Mr. Anderson appears to have made an individual contribution in the amount of \$2,000, the next issue is whether the contribution was designated for particular elections. Based on information given, it does not appear to have been. At no point in Mr. Anderson's September 15, 1997 letter accompanying the check, or in his response to the complaint, is there any indication that the contribution was designated for a particular election. Likewise, the September 15, 1997 letter states only that he wishes to support the Fossella Committee's candidacy for Congress through a check in the amount of \$2,000. The response merely states that he sent a check to Fossella for Congress in the amount of \$2,000 and does not mention either the 1997 Primary Election or the 1997 General Election. Even the canceled check

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fails to show Mr. Anderson's designation; the only information given is Neil Anderson's signature, the payee (Fossella for Congress), the account (Jack R. Anderson), the date, and the amount. As such, it appears that Mr. Anderson never made a contribution designated for the 1997 Primary Election. Thus, contrary to the allegation in the complaint, the Fossella Committee apparently did not receive a post-primary contribution from Mr. Anderson.

This Office also recommends that the Commission find reason to believe that Jack R. Anderson violated 2 U.S.C § 441(a)(1)(A) by making an excessive contribution to the Committee to Re-Elect Vito Fossella, but take no further action in this regard, close the file as to this respondent and send an admonishment letter.

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2) Salvatore Calcagno

As stated above, Mr. Calcagno responded to the complaint in a letter dated November 24, 1998 and also provided this Office with a photocopy of his canceled check. The check was made payable to the Fossella Committee ("Fossella for Congress") on September 28, 1997 in the amount of \$2,000. While the check is drawn on the joint account of Salvatore Calcagno and Helen Calcagno, the check bears the signature of only Salvatore Calcagno. In his response, Mr. Calcagno asserts that jointly he and his wife contributed \$2,000 for use in the 1997 election cycle; "\$1,000 for use in the primary election and a similar amount for use in the general election."

Based on the information presented, there appears to be insufficient evidence to demonstrate that a joint contribution was made by Mr. and Mrs. Calcagno. According to 11 C.F.R. § 110.1(k)(1), any contribution made by more than one person shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. Despite the fact the check is drawn on the joint account of Mr. and Mrs. Calcagno, the check indicates that only Mr. Calcagno made the contribution in that it bears only the signature of Salvatore Calcagno. In fact, Mrs. Calcagno's signature is not present on any of the evidence provided by either Mr. Calcagno or the Fossella Committee; Mrs. Calcagno's signature cannot be found on the canceled check, Mr. Calcagno's response to the complaint, or in any documentation provided in the response of the Fossella Committee. In addition, there has been no showing made by the Fossella Committee that it obtained a proper reattribution of the \$2,000 check within sixty days of receipt to reflect a joint contribution by the Calcagnos.

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Furthermore, the Fossella Committee's amended disclosure reports recognize Mr. Calcagno's \$2,000 contribution as an individual contribution; Mrs. Calcagno's own contributions are also treated as such. According to the Fossella Committee's disclosure reports, on or about October 3, 1997 Salvatore Calcagno made a contribution in the amount of \$2,000 for both the Primary and General Elections, while Mrs. Helen Calcagno made two contributions totaling \$750: 1) on or about October 15, 1997 a contribution in the amount of \$500 in connection with the 1997 General Election; and 2) on or about December 1, 1997 a contribution in the amount of \$250 in connection with the 1997 General Election. Thus, this Office believes that the \$2,000 contribution was not a joint contribution between Mr. and Mrs. Calcagno, but rather a contribution made by Salvatore Calcagno alone.

Considering that Mr. Calcagno appears to have made an individual contribution in the amount of \$2,000, the next issue is whether the contribution was designated for particular elections. Based on information given, it does not appear to have been. The September 28, 1997 check does not designate the contribution for a particular election; the only information given is Salvatore Calcagno's signature, the payee ("Fossella for Congress"), the account (Salvatore Calcagno and Helen Calcagno), the date, and the amount. Only the response to the complaint provides insight as to Mr. Calcagno's intentions. The Fossella Committee has not provided this Office with evidence demonstrating that Mr. Calcagno designated the \$2,000 check through a contemporaneous writing. As such, it appears that Mr. Calcagno never made a contribution properly designated for the 1997 Primary Election. Thus, contrary to the allegation in the complaint, the Fossella Committee did not receive a post-primary contribution from Mr. Calcagno.

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This Office also recommends that the Commission find reason to believe that Mr. Calcagno violated 2 U.S.C § 441(a)(1)(A) by making an excessive contribution to the Committee to

Re-Elect Vito Fossella, but take no further action, close the file as to this respondent and send an admonishment letter.

3) Frank Covino

According to the Fossella Committee's amended 1997 Pre-Special report, on October 3, 1997 Frank Covino made two contributions in the aggregate amount of \$2,000: 1) a \$1,000 contribution in connection with the 1997 Primary Election; and 2) a \$1,000 contribution in connection with the 1997 General Election.

The response of Frank Covino is in sharp contrast to the information supplied in the Fossella Committee's most recently amended disclosure reports. According to Mr. Covino, because the Covinos do not have separate checking accounts, Mr. Covino issued a check from their joint checking account in the amount of \$2,000 on or about October 3, 1997 to the Committee to Re-elect Vito Fossella to be attributed as follows: \$1,000 attributable to Mr. Covino and \$1,000 attributable to Mrs. Covino. Mrs. Jean Marie Covino, though not a respondent, also provided this Office with a response concurring with the statements made in Mr. Covino's response.

Mr. Covino did not provide this Office with a photocopy of the canceled check, and thus this Office cannot confirm the signature(s) on the check. However, it appears highly probable that only Mr. Covino signed the check. The language in both responses, namely that Mr. Covino issued the check, indicates that only he signed it. According to 11 C.F.R. § 110.1(k)(1), any contribution made by more than one person shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. There also appears to be no separate, contemporaneous writing to demonstrate that Mrs. Covino intended to be part

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of a joint contribution. Therefore, it appears that the October 3, 1997 contribution was an individual contribution made by Frank Covino, and not a joint contribution by Mr. and Mrs. Covino.

Considering that Mr. Covino appears to have made an individual contribution in the amount of \$2,000, the next issue is whether the contribution was designated for particular elections. Based on information given, it does not appear to have been. The responses of Mr. and Mrs. Covino do not offer any information relating to the election for which the contribution was intended. The gist of Mr. Covino's response is that his contribution was intended to aid the Committee to Re-elect Vito Fossella. The Fossella Committee has not provided this Office with documentation demonstrating that Mr. Covino designated the \$2,000 check for a particular election. It appears therefore that Mr. Covino never made a contribution properly designated for the 1997 Primary Election. Thus, contrary to the allegation in the complaint, it appears the Fossella Committee did not receive a post-primary contribution from Mr. Covino.

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This Office also recommends that the Commission find reason to believe that Mr. Covino violated 2 U.S. C § 441(a)(1)(A) by making an excessive contribution to the Committee to Re-Elect Vito Fossella, but take no further action, close the file as to this respondent and send an admonishment letter.

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5) Charlene Jones

Ms. Jones states in her response that on or about October 15, 1997, she made "separate contributions to the committee of \$1,000 each" for use in Representative Fossella's 1997 Primary Election and 1997 General Election. Ms. Jones did not provide this Office with a copy of her canceled check(s). The October 15, 1997 contribution date noted in Ms. Jones's response corresponds with the date of receipt reported in the Fossella Committee's most recently amended 1997 Pre-General report. According to the Fossella Committee's most recently amended 1997 Pre-General report, Ms. Jones made two contributions on October 15, 1997: 1) a \$1,000 contribution for use in the 1997 Primary Election; and 2) a \$1,000 contribution for use in the 1997 General Election. As such, the \$1,000 primary election contribution dated October 15, 1997 was clearly a post-primary contribution.¹⁷

Since Ms. Jones had also given \$1,000 for the General Election on October 15, 1997, a redesignation would not have rectified the problem, because such a redesignation would have

¹⁷ If it was undesignated, then the contribution would be a straight forward excessive contribution for the general election. Either way, this contribution violates 2 U.S.C. §§ 441(a)(1)(A) and 441a(f).

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meant that the Fossella Committee received \$2,000 from Ms. Jones for the General Election. Thus, the Fossella Committee should have either given Ms. Jones a refund of \$1,000 or obtained a reattribution within sixty days of receipt. There is no information submitted on behalf of either Ms. Jones or the Fossella Committee indicating that such action was taken. In fact, the Committee's recent disclosure reports indicate that the Fossella Committee retained the full \$2,000 contribution.

This Office also

recommends that the Commission find reason to believe that Charlene Jones violated 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(3)(i) by making a post-primary contribution in the absence of the net debts outstanding, but take no further action, close the file as to this respondent and send an admonishment letter.

6) George Quinn of 4170 Richmond Ave.

For the reasons stated in note 12, supra, this Office recommends the Commission find no reason to believe that George Quinn of 4170 Richmond Ave., Staten Island, New York, violated any provision of the Act with respect to MUR 4850 and close the file as to this respondent.

7) George Quinn of 27 Gilroy Street.

Mr. George Quinn did not respond to the complaint. Likewise, the Fossella Committee did not provide any information with respect to the allegation involving Mr. Quinn's contribution. According to the Fossella Committee's most recent amended disclosure reports, Mr. Quinn made two contributions in connection with the 1997 General Election totaling \$1,200:

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1) a \$200 contribution made on or about October 24, 1997; and 2) a \$1,000 contribution made on or about October 28, 1997. Thus, from the Committee's own reports, Mr. Quinn made a \$1,200 contribution to the Fossella Committee in connection with the 1997 General Election.

Mr. Quinn's \$1,200 contribution exceeded the allowable limit. As such, the Fossella Committee should have refunded to Mr. Quinn the excess amount. There is no evidence demonstrating that the Committee took the appropriate steps to provide the respondent with a \$200 refund. In fact, the Committee's recent disclosure reports indicate that the Fossella Committee retained the full \$1,200 contribution.

In light of the fact that the excessive portion of his contribution was only \$200, this Office recommends that the Commission take no action with regard to Mr. Quinn of 27 Gilroy Street, Staten Island, NY, and close the file as to this respondent.

8) Bruce Ratner

A photocopy of Bruce Ratner's \$2,000 contribution check reveals that the contribution was made on September 3, 1997, in sharp contrast to the date of receipt filed by the Fossella Committee in its amended 1997 12 Day Pre-Primary Report. In that report, the date of receipt for the Ratner contribution is September 29, 1997, or almost a month later. The memo on the bottom left corner of Mr. Ratner's contribution check states "PRIMARY AND GENERAL ELECTION." Thus, it appears that Mr. Ratner made a proper designation pursuant to 11 C.F.R. § 110.1(b)(2)(i). In addition, Mr. Ratner's September 3, 1997 contribution was made prior to the date of the September 16, 1997 Primary Election. Therefore, despite the apparently

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inaccurate date of receipt reported, the Fossella Committee did not receive a post-primary contribution from Mr. Ratner. This Office recommends that the Commission find no reason to believe that Bruce Ratner violated 2 U.S.C. § 441a(a)(1)(A) and close the file as to this respondent.

9) Nelson Rockefeller, Jr.

Similarly, a photocopy of Mr. Rockefeller's \$1,000 contribution check indicates that this contribution was made on September 3, 1997, in sharp contrast to the September 18, 1997 date of receipt filed by the Fossella Committee in its amended 12 Day Pre-Special Report. The Rockefeller check, however, does not make a designation for a particular election; the memo on the bottom left corner of the contribution check merely states, "Political Contribution." As such, the contribution was not designated to a particular election. In cases where a contribution is not designated in writing by the contributor, 11 C.F.R. § 110.1(b)(2)(ii) provides that the contribution will be considered to be in connection with the next election for that Federal office after the contribution is made. Since the contribution was made prior to the September 16, 1997 Primary Election, the contribution would be applied to that election. Thus, the Fossella Committee did not receive a post-primary contribution in this instance. This Office recommends that the Commission find no reason to believe that Nelson Rockefeller, Jr., violated 2 U.S.C. § 441a(a)(1)(A) and close the file as to this respondent.

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c) Straight Forward Excessive Contributions from Named Respondents

1) John McCullough

Based on a review of Mr. McCullough's response to the complaint, and the lack of contemporaneous documentation showing designations for particular elections, it appears that he did not designate his \$2,000 contribution to the Fossella Committee at the time he made the contribution. Mr. McCullough's response to the complaint comes in the form of a November 23, 1998 letter directed to the Fossella Committee with respect to the complaint. In this letter, counsel for John McCullough asserts that the respondent made one contribution in the amount of \$2,000 which he intended to be divided between the primary and general elections. However, John McCullough did not provide this Office with a photocopy of his canceled check or any other information supporting this expression of intent. Likewise, the Fossella Committee did not provide this Office with any documentation of his contribution.

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The language of the November 23, 1998 letter seems to indicate that Mr. McCullough placed the responsibility for making the appropriate designation in the hands of the Fossella Committee, rather than making a designation himself. Specifically, counsel for Mr. McCullough advised the Committee to review its "records and confirm to us that in fact these contributions were so designated." Counsel further stated that "[i]f the Committee did not properly designate these contributions (one for the primary, one for the general election), please make the necessary corrections so that they are re-designated accordingly." Counsel also advised the Committee to refund any monies not utilized to cover any debts outstanding.

Read together, 11 C.F.R. §§ 110.1(b)(2), (4), and (5) provide that only the contributor can execute an effective designation of a contribution for a particular election. In this case, it appears as if Mr. McCullough simply wrote a check in the amount of \$2,000 expecting the Committee to apply \$1,000 toward the 1997 Primary Election and \$1,000 toward the 1997 General Election. Such an approach, however, would result in an undesignated contribution. In cases where a contribution is not designated in writing by the contributor for a particular election, the contribution is considered to be in connection with the next election after the contribution is made. 11 C.F.R. § 110.1(b)(2)(ii). Given that Mr. McCullough's contribution was made on or about September 4, 1997, the \$2,000 contribution would be applied by regulation to the 1997 Primary Election.

Thus, it appears that the Fossella Committee accepted a straight forward excessive contribution from Mr. McCullough for the primary. Given that Mr. McCullough's \$2,000 primary contribution exceeded the maximum limit, the Fossella Committee should have refunded Mr. McCullough the excess amount. There is no evidence submitted to this Office demonstrating that the Committee took the appropriate steps to provide the respondent with a

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\$1,000 refund. In fact, the Committee's recently amended disclosure reports indicate that the Fossella Committee retained the full \$2,000 contribution.

This Office also recommends that the Commission find reason to believe that John McCullough violated 2 U.S.C § 441a(a)(1)(A) by making an excessive contribution to the Committee to Re-Elect Vito Fossella, but take no further action in this regard, close the file as to this respondent and send an admonishment letter.

2) Robert M. Murphy

This Office has not located this respondent because the Fossella Committee's Pre-Special reports did not disclose the address of Robert Murphy. Thus, Robert M. Murphy did not respond to the complaint. Likewise, the Fossella Committee did not provide any information with respect to the allegation in the complaint involving Mr. Murphy. The Committee's original "Pre-Special" Report did not include any contribution from Robert Murphy. At the time in which the complaint was filed, the Fossella Committee's first amended 1997 Pre-Special Report disclosed that Mr. Murphy made a \$2,000 contribution on or about September 11, 1997 in connection with the 1997 Primary Election. According to the Fossella Committee's most recently amended 12 Day Pre-Special Report, which was filed after the complaint, the Committee received two \$1,000 contributions from Mr. Murphy in connection with the 1997 Primary Election and 1997 General Election respectively. The September 11, 1997 contribution receipt date is prior to the date of the September 16, 1997 Primary Election, so a post-primary contribution situation is not involved in this case. However, given that a review of the documentary evidence submitted by

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numerous respondents has shown that the Committee's reports are apparently inaccurate in their reporting of designated contributions, this Office believes that it is highly possible that a redesignation on the contributor's part was not made and that Mr. Murphy made an excessive contribution with respect to the 1997 election cycle.

As mentioned above, the responses of contributors such as John McCullough appear to indicate that the Committee may have unilaterally redesignated a contribution without the express consent of the contributor. Moreover, this information, coupled with canceled checks submitted to this Office from respondents Anderson and Calcagno appear to show that the Committee reported certain contributions as designated for particular elections where no designations were made.

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Because this Office currently possesses no specific information about the Murphy contribution other than that in the Committee's reports, and consistent with the discussion supra at 40, this Office recommends that the Commission take no action at this time with respect to Robert M. Murphy.

3) Ronald Purpora

Respondent Ronald Purpora did not provide a response to the complaint. The Fossella Committee also did not respond to this aspect of the complaint. According to the Fossella Committee's most recently amended disclosure reports, on or about September 10, 1997 Mr. Purpora made two \$1,000 contributions designated for the 1997 Primary Election. Thus, by the Committee's own reports, Mr. Purpora made a \$2,000 contribution to the Fossella Committee in connection with the 1997 Primary Election. Mr. Purpora's apparent \$2,000 contribution exceeded the allowable limit. As such, the Fossella Committee should have either attempted to obtain a redesignation of the excess contribution for use in the 1997 General Election, or refunded to Mr. Purpora the excess amount. There is no evidence demonstrating that the Committee took the appropriate steps to seek a redesignation or to provide the respondent with a \$1,000 refund. In fact, the Committee's recent disclosure reports indicate that the Fossella Committee retained the full \$2,000 contribution.

Because this Office currently possesses no specific information about the Purpora contribution other than that in the Committee's reports, and consistent with the discussion supra at 40, this Office recommends that the Commission take no action at this time with respect to Ronald Purpora.

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2. Receipt of Excessive Contributions in 1998

With respect to the 1998 Primary Election, the Fossella Committee's 1998 amended post-primary reports do not disclose the existence of any outstanding debts. Thus, the Fossella Committee would have not been permitted to receive any post-primary contributions from contributors. If the Committee accepted contributions made after the date of the September 15, 1998 Primary Election, but designated for that election, the Committee would have violated 441a(f). An analysis of the contributions made by the named respondents and of post-primary contributions from others is provided below.

a) Making of Post-Primary Contributions by Named Respondents

1) Getz Obstfeld

Getz Obstfeld's response does not dispute the contribution date listed in the complaint regarding his contribution for the 1998 Primary Election. Mr. Obstfeld merely states: "In 1998, I made a contribution in the amount of \$1,000 for the Primary and \$1,000 for the General Election of Congressman Fossella." Mr. Obstfeld has not provided this Office with a photocopy of the canceled check, or any other information germane to this allegation. The Fossella Committee also did not provide any information concerning Mr. Obstfeld's contribution. Mr. Obstfeld's primary-related contribution is listed as received on October 24, 1998. Given that the 1998 Primary Election took place on September 15, 1998, Mr. Obstfeld's October 24, 1998 contribution appears to have been clearly post-primary in nature.

Since Mr. Obstfeld had contributed \$1,000 to the General Election at the same time, a redesignation of the post-primary contribution would not have rectified the Committee's receipt of an excessive contribution, because such a redesignation would have meant that the Fossella Committee would have received \$2,000 from Mr. Obstfeld for the 1998 General Election, \$1,000

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over the maximum limit. Thus, the Fossella Committee should have given Mr. Obstfeld a refund of \$1,000 within sixty days of receipt. There is no information submitted on behalf of either Mr. Obstfeld or the Fossella Committee indicating that such a refund was made. In fact, the Committee's recently amended disclosure reports indicate that the Fossella Committee retained the full \$1,000 post-primary contribution.

This Office also

recommends that the Commission find reason to believe that Getz Obstfeld violated 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(3)(i) by making a post-primary contribution in the absence of net debts outstanding, but take no further action, close the file as to this respondent and send an admonishment letter.

2) Andrew Leider

Mr. Andrew Leider did not respond to the complaint. Likewise, the Fossella Committee did not provide any information with respect to the allegation involving Mr. Leider's contribution. According to the Fossella Committee's 1998 amended 30 Day Post-General Report, on October 24, 1998 Mr. Leider made separate contributions of \$1,000 each for use in Representative Fossella's 1998 Primary Election and 1998 General Election. Given that the 1998 Primary Election had taken place on September 15, 1998, Mr. Leider's October 24, 1998 contribution was clearly a post-primary contribution.

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Since Mr. Leider had already given \$1,000 to the General Election, a redesignation of the \$1,000 post-primary contribution would not have rectified the problem, because such a redesignation would have meant that the Fossella Committee had received \$2,000 from Mr. Leider for the 1998 General Election, \$1,000 over the maximum limit. Thus, the Fossella Committee should have given Mr. Leider a refund of \$1,000 within sixty days of receipt. There is no information submitted on behalf of either Mr. Leider or the Fossella Committee indicating that such action was taken. In fact, the Committee's recently amended disclosure reports indicate that the Fossella Committee retained the full \$1,000 post-primary contribution.

Because this Office currently possesses no specific information about the Leider contribution other than that in the Committee's reports, and consistent with the discussion supra at 40, this Office recommends that the Commission take no action at this time with respect to Andrew Leider.

3) Mark Lipton

Mr. Lipton admits in his response that he "made a contribution in the form of one \$2,000 check made payable to Vito Fossella for Congress dated October 14, 1998." He further states that it was his understanding that an "amount of \$1,000 was used for the Primary and \$1,000 was used for the General Election of Congressman Fossella." Mr. Lipton did not provide this Office with a copy of his canceled check, or any other additional information. According to the Fossella Committee's recently amended reports, Mr. Lipton made contributions in the aggregate amount of \$2,100: 1) on October 14, 1998 a \$1,000 contribution in connection with the 1998 Primary

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Election; 2) on October 14, 1998 a \$1,000 contribution in connection with the 1998 General Election; and 3) a \$100 contribution.²⁵ The Committee's most recently amended 30 Day Post General Report shows that the Committee received a contribution from Mr. Lipton of \$1,000 for the primary on October 14, 1998. The Fossella Committee did not present any additional information to this Office in connection with Mr. Lipton's contribution. Given that the 1998 Primary Election took place on September 15, 1998, Mr. Lipton's October 14, 1998 contribution was clearly post-primary in nature.

Since Mr. Lipton had also given at least \$1,000 for the General Election, a redesignation of his post-primary contribution would not have rectified the problem; a redesignation would have meant that the Fossella Committee received at least \$2,000 from Mr. Lipton for the 1997 General Election, \$1,000 over the limit. Thus, the Fossella Committee should have given Mr. Lipton either a refund of \$1,100 – representing a refund of the post-primary contribution plus a refund of the \$100 excessive amount for either the primary or general election – or obtained a reattribution within sixty days of receipt. There is no information submitted on behalf of Mr. Lipton or the Fossella Committee indicating that such action was taken. In fact, the Committee's recent disclosure reports indicate that the Fossella Committee retained the full \$1,100.

²⁵ It should be noted that the Fossella Committee's amended 1998 Year End Report, filed on November 26, 1999, discloses Mr. Lipton's total 1998 contributions as the amount of \$2,100. The \$100 contribution was not itemized, so this Office is unable to ascertain for which election this contribution was designated. Accordingly, the Fossella Committee apparently accepted a \$100 excessive contribution from Mr. Lipton by in connection with either the 1998 Primary Election or 1998 General Election, in addition to the excessive post-primary contribution of \$1,000.

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This Office also recommends that the Commission find reason to believe that Mark Lipton violated 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(3)(i) but take no further action, close the file as to this respondent and send an admonishment letter.

4) John Sipp

As stated in his response, Mr. Sipp made three contributions in 1998 totaling \$2,000: 1) a \$250 contribution on May 5, 1998; 2) a \$450 contribution for three tickets to a cocktail reception on October 8, 1998; and 3) an additional contribution of \$1,300, also on October 8, 1998. The response of Mr. Sipp contrasts with the information supplied in the Fossella Committee's most recently amended disclosure reports. According to the Fossella Committee's amended 1998 disclosure reports, Mr. Sipp made three contributions in the amount of \$1,550: 1) on June 22, 1998, a \$250 contribution in connection with the 1998 Primary Election; 2) on October 24, 1998 a \$300 contribution in connection with the 1998 Primary Election; and 3) on October 24, 1998 a \$1,000 contribution in connection with the 1998 General Election. With respect to the \$450 contribution, the Fossella Committee's amended 1998 Year End Report reports that this contribution was reattributed to his wife, Dorothy Sipp, on November 17, 1998. The Fossella Committee did not provide this Office with contemporary documentary evidence that the \$450 contribution was reattributed to Mrs. Sipp.

The language of Mr. Sipp's response seems to indicate that he placed the responsibility for making the appropriate designation in the hands of the Fossella Committee, rather than making a designation himself. Mr. Sipp apparently acknowledges that he made the entire \$2,000 in contributions himself, and his response makes no mention of any reattribution to Mrs. Sipp.

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However, he further states that it was his understanding that "one-half of the total contribution has been applied to the Primary fund, and the remaining half for the General Election fund.

Read together, 11 C.F.R. §§ 110.1(b)(2), (4), and (5) provide that only the contributor can execute an effective designation of a contribution for a particular election. In this case, it appears as if Mr. Sipp simply wrote checks in the aggregate amount of \$2,000 expecting the Committee to apply \$1,000 toward the 1998 Primary Election and \$1,000 toward the 1998 General Election. Such an approach, however, would result in an undesignated contribution. In cases where a contribution is not designated in writing by the contributor for a particular election, the contribution is considered to be in connection with the next election after the contribution is made. 11 C.F.R. § 110.1(b)(2)(ii). Given that Mr. Sipp made apparently undesignated contributions, the two October 8, 1998 contributions, \$1,300 and \$450 respectively, would be applied by regulation to the 1998 General Election. As such, it appears that Mr. Sipp never made a contribution properly designated for the 1998 Primary Election. Thus, contrary to the allegation in the complaint, it appears the Fossella Committee did not receive a post-primary contribution from Mr. Sipp; the contribution made on May 5, 1998 (\$250) would have been received before and applied to the primary election.

However, it appears that the Fossella Committee accepted straight forward excessive contributions from Mr. Sipp for the general election. Given that Mr. Sipp's general election contributions in the aggregate amount of \$1,750 (\$1,300 and \$450 on October 8, 1998 respectively) exceeded the maximum limit, the Fossella Committee should have refunded Mr. Sipp the excess amount, or obtained a retribution. There is no evidence submitted to this Office demonstrating that the Committee took either of these steps. The Committee's recently

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amended disclosure reports indicate that the Fossella Committee simply retained the full \$1,750 contribution.

In light of the fact

that the excessive portion of his contribution was \$750, this Office recommends that the Commission take no action with regard to John Sipp and close the file as to this respondent.

5) Steven H. Salami

Steven H. Salami's response does not dispute the contribution date listed in the complaint regarding his contribution for the 1998 Primary Election. Mr. Salami merely states: "In 1998, I made a contribution in the amount of \$1,000 for the Primary and \$1,000 for the General Election of Congressman Fossella." According to the Fossella Committee's 30 Day Post-General Reports; Mr. Salami made two contributions in the aggregate amount of \$2,000: 1) on October 31, 1998, a contribution in the amount of \$1,000 in connection with the 1998 Primary Election; and 2) on October 31, 1998 a contribution in the amount of \$1,000 in connection with the 1998 General Election.

Since Mr. Salami had already contributed \$1,000 to the General Election, a redesignation of the post-primary contribution would not have helped, because such a redesignation would have meant that the Fossella Committee received \$2,000 from Mr. Salami for the 1998 General Election, \$1,000 over the limit. Thus, the Fossella Committee should have given Mr. Salami a refund of \$1,000 within sixty days of receipt. There is no information submitted on behalf of either Mr. Salami or the Fossella Committee indicating that such action was taken. In fact, the

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committee's most recent disclosure reports indicate that the Fossella Committee retained the full \$1,000 post-primary contribution.

This Office also

recommends that the Commission find reason to believe that Steven H. Salami violated 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(3)(i) by making a post-primary contribution in the absence of net debts outstanding, but take no further action, close the file as to this respondent and send an admonishment letter.

6) Lois Nicotra

Lois Nicotra did not respond to the complaint. Likewise, the Fossella Committee did not provide any evidence or information with respect to the allegation against Mrs. Nicotra.

According to the Fossella Committee's amended 1998 reports, Mrs. Nicotra made four (4) contributions in the aggregate amount of \$2,500 during the 1998 election cycle: 1) on or about June 22, 1998, a \$500 contribution intended for the 1998 Primary Election; 2) on or about October 31, 1998, a \$500 contribution intended for the 1998 Primary Election; 3) on or about October 31, 1998, a second \$500 contribution intended for the 1998 Primary Election; and 4) on or about October 31, 1998, a \$1,000 contribution intended for the 1998 General Election. Based on the information available, Mrs. Nicotra apparently made post-primary contributions totaling \$1,000.

Since Mrs. Nicotra had already contributed \$1,000 to the General Election, a redesignation of the post-primary contributions would not have rectified those contributions; a

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redesignation would have meant that the Fossella Committee received \$2,000 from Ms. Nicotra for the 1997 General Election, \$1,000 over the limit. Thus, the Fossella Committee should have given Mrs. Nicotra a refund of \$1,000 within sixty days of receipt. There is no information submitted on behalf of Mrs. Nicotra or the Fossella Committee indicating that such action was taken. In fact, the Committee's most recent disclosure reports indicate that the Fossella Committee retained the full \$1,000 post-primary contribution.

Because

this Office currently possesses no specific information about the Nicotra contribution other than that in the Committee's reports, and consistent with the discussion supra at 40, this Office recommends that the Commission take no action at this time with respect to Lois Nicotra.

7) Richard Nicotra

Richard Nicotra did not respond to the complaint. Likewise, the Fossella Committee did not provide any evidence or information with respect to the allegation against Mr. Nicotra. According to the Fossella Committee's amended 1998 reports, on October 31, 1998 Mr. Nicotra made separate contributions of \$1,000 each for use in the Representative Fossella's 1998 Primary Election and 1998 General Election. Given that the 1998 Primary Election took place on

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September 15, 1998, one of Mr. Nicotra's October 31, 1998 \$1,000 contributions was clearly a post-primary contribution.

Since Mr. Nicotra had already given \$1,000 to the General Election, a redesignation of the post-primary contribution would not have rectified the problem, because such a redesignation would have meant that the Fossella Committee received \$2,000 from Mr. Nicotra for the 1998 General Election, \$1,000 over the maximum limit. Thus, the Fossella Committee should have given Mr. Nicotra a refund of \$1,000 within sixty days. There is no information submitted on behalf of either Mr. Nicotra or the Fossella Committee indicating that such action was taken. In fact, the Committee's recent disclosure reports indicate that the Fossella Committee retained the full \$1,000 post-primary contribution.

Because this Office currently possesses no specific information about the Nicotra contribution other than that in the Committee's reports, and consistent with the discussion supra at 40, this Office recommends that the Commission take no action at this time with respect to Richard Nicotra.

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3. Conduits and Intermediaries / Corporate or Personal Contributions in the Name of Another

1) Richard Addeo and ADCO Employees

It appears that the crux of the complainant's allegations against ADCO corporate respondents is focused most squarely on the allegation that one particular individual, Richard Addeo, used employees and/or family members of employees in order to make contributions in the name of another. The complaint is not clear as to whether it is alleging the use of corporate funds or Mr. Addeo's personal funds for this purpose.

Specifically, the complaint asserts that seventeen (17) individuals connected with ADCO made contributions to the Fossella Committee totaling \$44,700, and that the company or the president, Richard Addeo, made these contributions through these individuals. The Fossella Committee reported that the following ADCO employees made contributions to the campaign during the 1997-1998 election cycle: 1) Richard Addeo, Owner, two contributions in the aggregate amount of \$2,000; 2) Ciro Amaturro, Vice President, two contributions in the aggregate amount of \$2,000; 3) Thomas Conte, Project Manager, two contributions in the aggregate amount of \$2,000; 4) George Gaspar, Vice-President, Vice President, two contributions in the aggregate amount of \$2,000; 5) Jordan Gatti, Vice President, two contributions in the aggregate amount of \$2,000; 6) Louis Grandelli, Accountant, two contributions in the aggregate amount of \$2,000; 7) Mark File, Project Manager, two contributions in the aggregate amount of \$2,000; 8) Robert Harper, Vice President, two contributions in the aggregate amount of \$2,000; 9) Gabrielle Miglino, Vice President, two contributions in the aggregate amount of \$2,000;

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- 10) Thomas Pollando, Vice President, two contributions in the aggregate amount of \$2,000;
- 11) Anthony Scimone, Supervisor, two contributions in the aggregate amount of \$2,000;
- 12) Robert Supina, Vice President, two contributions in the aggregate amount of \$2,000;
- 13) Edward Welsh, Vice President, four contributions in the aggregate amount of \$4,000; and
- 14) Lisa Yost, Vice President, one contribution in the aggregate amount of \$1,000.

The complainant appears to base his allegation particularly on the fact that the Fossella Committee's reports disclose that a number of the contributions made by these respondents to the Committee were received on or about March 15, 1998. Other than the information in the Fossella Committee's disclosure reports, the complainant offers no additional evidence to substantiate his allegations that funds other than the contributors' own were involved.

All of the ADCO respondents who responded to the complaint directly deny these allegations. In addition, it appears possible that the individual contributors were members of ADCO's solicitable class, and could have been solicited by ADCO to send contributions directly to the Fossella Committee.²⁹ Given the direct denials by the respondents, and the absence of any other information that would corroborate the complaint's allegations, this Office recommends that the Commission find no reason to believe that ADCO Electric Corporation, Richard Addeo, Gina Addeo, Ciro Amaturro, Joanne Amaturro, Thomas Conte, Mark File, George Gasper, Jordan Gatti, Louis Grandelli, Robert Harper, Gabrielle Miglino, Michael Miglino, Thomas Pollando, Ronald Scimone, Robert Supina, Edward Welsh, or Lisa Yost violated 2 U.S.C. § § 441b or 441f and close the file as to these respondents.

²⁹ The following positions were represented: 1) the President of the company, Richard Addeo; 2) nine (9) Vice Presidents; 3) two (2) project managers; one (1) electrical supervisor; and 4) one (1) accountant.

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3) Angiuli Motors

Complainant alleges that employees of Angiuli Motors made contributions in the name of another. However, the complainant did not name specific contributors whom he alleged were conduits. The Fossella Committee reported that the following employees made contributions to the Committee during the 1997-1998 election cycle: 1) Saverlo Anguili, President, four

contributions in the aggregate amount of \$1,600; 2) Gary Angiuli, Vice-President, one contribution in the amount of \$1,000; and 3) Louise Angiuli, Secretary and Treasurer, three contributions in the aggregate amount of \$3,000. These contributions were made on different dates, and there is no evidence in the complaint that any of these individuals were reimbursed by Angiuli Motors. It is unclear upon what basis the complainant made this allegation. Other than the information in the Fossella Committee's disclosure reports, the complainant offers no additional evidence to substantiate his allegation.

Angiuli Motors, Inc. directly denies this allegation. Louise B. Angiuli, Secretary/Treasurer of Angiuli Motors Inc. submitted a response on behalf of the respondent, stating that "[a]t no time was any contribution made via conduit or intermediaries...." Angiuli also states that "any contribution made by the owners or officers of Angiuli were made by individuals on their behalf and as an expression of their own personal preferences and beliefs." There are no additional denials from the individual employees because the complaint failed to name any additional employees and thus none were notified. In addition, the individual contributors itemized in the Fossella Committee's reports appear to be members of Angiuli Motors' solicitable class, and could have been solicited by Angiuli Motors to send contributions directly to the Fossella Committee. Given the direct denials by the respondent, and the absence of any other information that would corroborate the complaint's allegations, this Office recommends that the Commission find no reason to believe that Angiuli Motors, Inc. violated 2 U.S.C. § 441b or 2 U.S.C. § 441f and close the file as to this respondent.

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IV. RECOMMENDATIONS

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5. Find reason to believe that Charlene Jones, Mark Lipton, Getz Obstfeld, and Steven Salami violated 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(3)(i), but take no further action, close the file as to these contributors and send admonishment letters.
6. Take no action with regard to George Quinn of 17 Gilroy Street, Staten Island, NY, and John Sipp, and close the file as to these respondents.
7. Take no action at this time with regard to Andrew Leider, Robert Murphy, Richard Nicotra, Lois Nicotra, and Ronald Purpora.
8. Find no reason to believe that the Committee to Re-Elect Vito Fossella, and Anthony J. Maltese, as treasurer, violated 2 U.S.C. § 441a(f) in connection with the contributions of Bruce Ratner and of Nelson Rockefeller, Jr.
9. Find no reason to believe that George Quinn of 4170 Richmond Ave., Staten Island, NY violated any provision of the Act and close the file with respect to this respondent.
10. Find no reason to believe that Bruce Ratner or Nelson Rockefeller, Jr. violated 2 U.S.C. § 441a(a)(1)(A) and close the file as to these respondents.
11. Find no reason to believe that the ADCO Electric Corporation, Angiuli Motors, Richard Addeo, Gina Addeo, Ciro Amaturò, Joanne Amaturò, Thomas Conte, Mark File, George Gasper, Jordan Gatti, Louis Grandelli, Robert J. Harper, Gabrielle Miglino, Michael Miglino, Thomas Pollando, Ronald Scimone, Robert Supina, Edward Welsh, and Lisa Yost violated 2 U.S.C. §§ 441b and 441f and close the file with respect to these respondents.

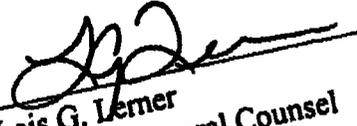
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Lawrence M. Noble
General Counsel

BY: 
Lois G. Lemer
Associate General Counsel

6/8/00
Date

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