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Activity in Case 1:02-cv-01237-JR FEDERAL ELECTION
Subject COMMISSION v. MALENICK et al "Order on Motion for
Reconsideration"

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**U.S. District Court
District of Columbia**

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Case Name: FEDERAL ELECTION COMMISSION v. MALENICK et al
Case Number: 1:02-cv-1237
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Docket Text:

ORDER granting FEC's motion for reconsideration [46], and denying Malenick's motion to amend the answer [49] and denying Malenick's motion for declaratory judgment [49]. Signed by Judge James Robertson on March 7, 2005. (MT)

The following document(s) are associated with this transaction:

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL ELECTION COMMISSION, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 02-1237 (R)
 :
 CAROLYN MALENICK, et al., :
 :
 Defendants. :

FEDERAL ELECTION COMMISSION
CIVIL ACTION NO. 02-1237 (R)
2005 MAR -7 P 5:01

ORDER

Pending before the Court are the motion of the Federal Election Commission for reconsideration of a portion of this Court's order of March 30, 2004, granting in part and denying in part plaintiff's motion for summary judgment, and the motion of defendant Carolyn Malenick to amend her answer and (by way of cross-motion) for declaratory judgment.

Defendant has not shown good cause for filing an amendment that would change the landscape of this litigation at a time when almost all of the issues in the case have been resolved. The counterclaim she wishes to assert would clearly be barred by the doctrine of sovereign immunity, and would accordingly be futile. Malenick's motions [49] are accordingly **denied**.

The FEC's motion for reconsideration [46] is **granted**. My finding that the present record was insufficient to support a finding that Triad, Inc. had accepted prohibited contributions

from corporations did, as the FEC suggests, proceed from the proposition that a showing of subjective intent would be necessary to brand funds "contributions," and, as the FEC has pointed out, the Supreme Court's decision in California Medical Ass'n. v. FEC, 453 U.S. 182 (1981), renders that proposition erroneous.

Simultaneously with its motion for reconsideration, the FEC submitted a "proposal for final resolution" of this matter, one that would limit the Court's final judgment and order to those claims for which summary judgment for the Commission has already been granted, plus the claims that would be established as a matter of law with the instant grant of the Commission's motion for reconsideration, plus Triad's excessive contribution made in conjunction with its affiliated political committee. The FEC's proposal, however, "assumes that Malenick will be able to substantiate her significant debt and minimal assets" (p. 9). The hard question is how Ms. Malenick is to "substantiate" her finances. The FEC suggests that I issue an order requiring her to submit documentation to the Court, but that proposal raises substantial privacy issues and involves the Court in a question that the Court need not be concerned with, if the FEC can be satisfied about Ms. Malenick's situation. Instead of requiring Ms. Malenick to comply with an open-ended order that she "file . . . documentation substantiating her assets and

liabilities," I will allow an additional period of time, say 90 days, for the FEC to take discovery of Ms. Malenick's finances, if it cares to do so, and then to submit, within, say 120 days (90 plus 30) any further motion it wishes to file concerning the financial penalties, if any, that should be imposed on Ms. Malenick. If such discovery is not taken, or such a motion is not filed, or both, I will rely upon the sworn statements Ms. Malenick has made about her finances, made under penalty of perjury, and will issue a final judgment and order for declaratory and injunctive relief, in substantially the form suggested by the FEC in its submission of April 30, 2004 [45].

JAMES ROBERTSON
United States District Judge