



FOR IMMEDIATE RELEASE
October 25, 2004

Contact: Betsey Swan
(518) 426-4118

FINDINGS IN THE COMPLAINT OF
DAVID SOARES V. PAUL CLYNE
COMPLAINT 2004-1

Fair Campaign Practices for the Capital Region, Inc. (FCP) held a hearing on October 25, 2004 to consider a complaint made by David Soares against Paul Clyne. Both are candidates for the office of Albany County District Attorney. Present were Hearing Panel members Eugene Rowland, Joan Elliott, Therese Lowenthal, Barbara Thomas, and Elizabeth Smith-Holmes and *ex officio* members Matt Dill, chair of the Saratoga County Conservative Party and Richard Arthur, delegate of the Working Families Party (WFP). Coordinator Betsey Swan recused herself as the result of a conflict of interest. Mr. Soares and Mr. Clyne appeared through their attorneys, Mark Mishler and James Featherstonhaugh respectively.

1. Mr. Soares complained that the following portion of a television advertisement aired by the Clyne campaign was false:
"Official records show the Working Families Party and David Soares secretly funded his campaign with over \$100,000 from New York City special interest groups."

The legality of donations to and expenditures by both the Soares campaign and the WFP was the subject of recent litigation. In his October 14, 2004 Decision and Order, New York State Supreme Court Justice Bernard J. Malone, Jr. held that all challenged donations to and expenditures by the Soares campaign were legal and appropriately disclosed under New York State Election Law. Judge Malone exonerated the Soares campaign of wrongdoing. However, the court held that the WFP, while not having received illegal campaign contributions, did violate state election law by sending four mailings in support of David Soares to Albany County Voters in the two weeks prior to the primary.

FINDING: UNFAIR CAMPAIGN PRACTICE. This portion of the Mr. Clyne's television spot violated FCP Principle 4, which prohibits the use of any campaign material that misrepresents, distorts, or otherwise falsifies a fact regarding the candidate or an opponent. The Clyne campaign misrepresented the facts by erroneously linking David Soares to the WFP mailings, and by stating that the Soares campaign was funded with secret contributions. As Judge Malone's opinion made clear, the Soares campaign properly disclosed all campaign contributions; nothing was secret about the money received by his campaign.

2. Mr. Soares complained that the following portion of the Clyne ad was false:
"Over \$80,000 came from an out of touch special interest group that advocates eliminating jail sentences for crack dealers."

Fair Campaign Practices For The Capital Region, Inc.
10 Norwood Drive, Menands, New York 12204 Telephone and FAX (518) 426-4118

Reform of the Rockefeller drug laws has emerged as one of the key issues in the Soares/Clyne campaign, with Soares advocating and Clyne opposing reform. Both Mr. Soares and the WFP have received campaign contributions, in accordance with New York State Election Law, from individuals and organizations, including the Drug Policy Alliance Network (DPAN) supporting reform of the Rockefeller drug laws. There was no evidence that contributors to the Soares campaign advocated eliminating jail sentences for crack dealers, although some proposed reforms to the drug laws would give greater discretion in sentencing, including the right to order treatment in lieu of jail.

FINDING: UNFAIR CAMPAIGN PRACTICE. This portion of the Mr. Clyne's television spot also violated FCP Principle 4 because it misrepresented the DPAN position concerning reform of the Rockefeller drug laws, in an effort to discredit Mr. Soares.

3. Mr. Soares complained that the following portion of the Clyne ad was false:
"Even worse, David Soares says he won't enforce the laws keeping our communities safe from drug dealers and gun violence."

The evidence offered to support this allegation consisted of a partial transcript of a press interview with David Soares, in which Mr. Soares proposed, if elected, to offer opportunities for people with substance abuse issues to receive treatment instead of incarceration, or a combination of both, depending on criminal history. Mr. Soares further stated that it was possible for a prosecutor to offer these options by "intelligently using his discretion". He did not say that he would fail to enforce the laws.

FINDING: UNFAIR CAMPAIGN PRACTICE. This portion of the Mr. Clyne's television spot also violated FCP Principle 4 because it misrepresented Mr. Clyne's public statements.

4. Mr. Soares complained that the Clyne campaign, in producing the television ad, deliberately mispronounced his name as "Suarez", to confuse voters about his ethnic origins. Mr. Clyne's representative denied this, saying that the speaker hired to make the ad mistakenly mispronounced the name.

NO FINDING. While it was careless of the Clyne campaign to let the ad run as produced, the Panel will not issue a finding in this portion of the Soares complaint.

In the future, however, candidates are advised FCP Principle 3 provides that the candidate will not participate in, permit, or condone any appeal to prejudice. FCP's Candidate's Guide provides that candidates should refrain from unnecessary allusions to an individual's race, religion, gender, age, or sexual orientation. Although it has not issued a finding in this portion of Mr. Soares' complaint, FCP believes candidates are responsible for the content of their campaign materials and believes that they should refrain from mention of potentially prejudicial personal characteristics absent relevance to the political campaign.

If a candidate or campaign wishes to quote from this Finding, FCP requires that the Finding be quoted in its entirety. FCP regards selective quotation of its Findings as an Unfair Campaign Practice.