



FOR IMMEDIATE RELEASE
October 25, 2004

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FINDINGS IN THE COMPLAINT OF
ROGER CUSICK V. DAVID SOARES
COMPLAINT 2004-3

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, candidates for the office of Albany County District Attorney. Present were Hearing Panel members Joan Elliott, Therese Lowenthal, Barbara Thomas, and Elizabeth Smith-Holmes and Coordinator Betsey Swan. Mr. Cusick appeared in person and Mr. Soares appeared through his attorney Mark Mishler.

1. Mr. Cusick complained that the Soares campaign violated FCP Principle 1, in which Mr. Soares agreed to conduct his campaign for office openly, fairly, and truthfully, because the Working Families Party (WFP) illegally gave him \$121,776.91 in election contributions, in violation of New York State Election Law.

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, although it did not receive 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: NO UNFAIR CAMPAIGN PRACTICE. As Judge Malone's opinion made clear, the Soares campaign received no illegal campaign contributions and properly disclosed the contributions it did receive.

2. Mr. Cusick complained that the Soares campaign on October 13, 2004 sent seven members of the clergy to Mr. Cusick's campaign office to protest a television advertisement by the Clyne campaign, which was the subject of Complaint 2004-1 and which Mr. Soares believed to be unfair. Mr. Cusick further complained that members of the clergy distributed literature that did not clearly state it was distributed on behalf of David Soares. The distributed document was entitled *An Open Letter to the Candidates for Albany County District Attorney*. In it the seven signatories, members of the clergy, deplored mischaracterization of the debate over Rockefeller drug law reform and especially the television ad that had aired the previous week, which they believed mischaracterized drug law reform and those who supported it. In conclusion the letter exhorted the candidates to denounce the ad and apologize to advocates of drug law reform for its baseless attacks. The letter was distributed to the Cusick campaign and the press on the day of the protest. There is no indication that it was published in the press or distributed to the public at large. The degree of Mr. Soares involvement in the incident was unclear, with Mr. Cusick alleging that the Soares campaign had masterminded the incident and Mr. Soares, through his representative, denying involvement.

FINDING: NO UNFAIR CAMPAIGN PRACTICE. The Panel finds nothing in the open letter that is misleading or distorts, misrepresents, or falsifies facts regarding Mr. Cusick. The letter is directed to all candidates. While it refers to the Clyne ad, it does not attribute the ad to the Cusick campaign and never mentions Mr. Cusick's name or otherwise implies his involvement with the ad. Given the uncertain involvement of the Soares campaign in this event, the fact that the letter was directed to the candidates and the fact that it was not distributed to the public at large or any segment thereof, it cannot be said to be Soares campaign material and therefore does not require identification as such pursuant to Principle 5.

3. Mr. Cusick complained that the following Soares television advertisement violated FCP Principle 2 because the advertisement stated Mr. Cusick was lying about Mr. Soares:

“Roger Cusick and Paul Clyne are lying about David Soares. The truth? A judge threw out their frivolous lawsuit. And Soares is in favor of tough punishment for drug dealers. Why are Clyne and Cusick lying? Because Cusick has no experience as a prosecutor. And because the Times Union calls Clyne's record unsettling and troubling. I'm Eliot Spitzer. David Soares has the experience to be an effective, tough and independent District Attorney. He'll keep Albany safe.”

FINDING: UNFAIR CAMPAIGN PRACTICE. The Soares ad erroneously stated that a judge threw out Mr. Cusick's frivolous lawsuit. See paragraph 1 above for a discussion of this litigation. To characterize the Judge's ruling as throwing out a frivolous lawsuit when an election law violation had been found was a misrepresentation of the facts, in violation of FCP Principle 4.

Candidates are further advised that accusing their opponents of lying may constitute an unfair attack on the character of the opponent, in violation of FCP Principle 2, if made without reference to the underlying facts that constituted the lie.

4. Mr. Cusick complained that Mr. Soares violated FCP Principle 6, in which he agreed not to abuse the FCP process for political advantage, by holding a press conference to announce filing of complaints with FCP.

FINDING: NO UNFAIR CAMPAIGN PRACTICE. Announcing that a complaint has been filed, without more, does not violate the FCP process.

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.