

#### **STATEMENT OF FORMER FEC CHAIRMAN SCOTT E. THOMAS**

I have been retained as an expert witness to advise Senator Edwards and his lawyers on the campaign finance laws. I have previously served as Chairman of the Federal Election Commission, and I worked at the FEC for 30 years, including almost 20 years as a Commissioner. I currently practice election law and regularly advise clients on the scope of campaign finance statutes and regulations.

I was asked to provide an opinion as to whether payments provided by Mrs. Rachel Mellon and Mr. Fred Baron to defray the expenses of Ms. Rielle Hunter during 2007 and January 2008 were made in violation of the federal campaign finance laws. On April 20, 2011, I met with federal prosecutors and law enforcement agents to share my opinion about whether, based on the facts in the light most favorable to prosecutors (regardless of how strongly they would be contested), there was a civil or criminal violation of the federal campaign finance laws. The purpose of this statement is – in summary form – to reiterate the conclusions that I provided to the Department of Justice.

Let me state at the outset that I have based my legal opinion on facts as I understand the government believes them to be, i.e., that former Senator John Edwards, either directly or through an intermediary, approached both Mrs. Mellon and Mr. Baron and asked them to provide financial assistance in connection with a very personal matter; that this solicitation occurred during Senator Edwards' campaign for the Democratic Party nomination for the Presidency; that the payments were motivated in part by a desire to elect Senator Edwards to that position; and that Mrs. Mellon and Mr. Baron then made such payments in a total amount well in excess of \$750,000.

It is my view that, under the law as developed by the United States courts and the Federal Election Commission, these payments would not be considered to be either campaign contributions or campaign expenditures within the meaning of the campaign finance laws; that the Federal Election Commission, if asked, would conclude that these payments did not constitute a violation of the law, even as a civil matter; and that the facts do not make out a knowing and willful violation of the campaign finance laws warranting criminal prosecution.

I have searched the record of reported cases, agency enforcement actions and advisory opinions, as well as my own experience on the Commission, for relevant authority. I do not believe that there is any prior case that states that the conduct at issue in the Edwards matter, or even conduct substantially similar to it, constituted a violation of the statute. Moreover, in 2007 and 2008, a candidate would not have been on notice that the payments by Mrs. Mellon and Mr. Baron to Ms. Hunter would violate the campaign finance laws. A criminal prosecution of a candidate on these facts would be outside anything I would expect after decades of experience with the campaign finance laws.

I should note that the Department of Justice appears to be relying on a Federal Election Commission Advisory Opinion issued in 2000 to Philip Harvey (Advisory Opinion 2000-08), as its only authority for its legal position in this case. I served as a Commissioner in 2000, when Harvey was decided, and I am familiar with the Advisory Opinion and its reasoning. In my considered opinion, the Harvey opinion, which I joined as a Commissioner, is plainly distinguishable and does not support the government's novel and misguided theory of campaign finance liability by Senator Edwards.

I believe that the theory on which the government intends to base its prosecution is without precedent in federal election law, and that the Federal Election Commission would not support a finding that the conduct at issue constituted a civil violation much less warranted a criminal prosecution.

I strongly urge that, if any action is contemplated on such a far-reaching, and (in my view) erroneous reading of the law, the matter should be considered in the first instance by the expert agency charged by Congress with interpreting and applying federal campaign laws – the Federal Election Commission.

Scott E. Thomas

#### **STATEMENT OF PAT FIORI**

I am a partner at Utrecht & Phillips, PLLC, where I practice in the areas of federal and state election law, campaign finance, ethics and lobbying laws. I regularly advise clients and represent them before the Federal Election Commission and before Congressional committees.

I previously served on the staff of the Federal Election Commission as Assistant General Counsel for Regulations and Legislation. I also worked as Executive Assistant to Commissioner John W. McGarry. I served as counsel the Clinton/Gore '92 and '96 campaigns, the Gore/Lieberman 2000 campaign, and the presidential primary campaigns of John Edwards in 2004 and 2008.

I have been asked by counsel to Senator Edwards to offer my legal opinion regarding payments that were made by Bunny Mellon and Fred Baron for Rielle Hunter's expenses in 2007 and 2008. Had I been asked for my legal opinion at the time the payments were made, I would have advised that based upon all of the FEC interpretations, including the Advisory Opinion issued to Philip Harvey, the payments for Ms. Hunter's expenses were not campaign contributions.

Based on my expert knowledge and experience with campaign finance law, I continue to believe today that the Mellon-Baron payments were not campaign contributions.

Patricia A. Fiori